

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 IN RE: CROP PROTECTION) CASE NO. 1:23MD3062
4 PRODUCTS LOYALTY PROGRAM)
5 ANTITRUST LITIGATION)
6)
7 This transcript relates to:)
8 ALL ACTIONS.)

9 FEDERAL TRADE COMMISSION, et al.,) CASE NO. 1:22CV828
10)
11 Plaintiff,)
12)
13 vs.)
14)
15 SYNGENTA CROP PROTECTION AG,)
16 SYNGENTA CORPORATION, SYNGENTA)
17 CROP PROTECTION, LLC, and)
18 CORTEVA, INC.)
19)
20 Defendants.) Winston-Salem, NC
21) May 23, 2024

22 TRANSCRIPT OF THE **INITIAL PRETRIAL CONFERENCE**
23 BEFORE THE HONORABLE JOI E. PEAKE
24 UNITED STATES MAGISTRATE JUDGE

25 APPEARANCES:

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P R O C E E D I N G S

THE COURT: All right. Good morning, everyone.

I'm going to ask my law clerk to call the two cases that are on first this morning that are related.

LAW CLERK: The Court calls Case No. 1:22CV828, Federal Trade Commission, et al., versus Syngenta Crop Protection AG, et al.

The Court also calls Case No. 1:23MD3062, In re: Crop Protection Products Loyalty Program Antitrust Litigation.

THE COURT: All right. Very good. Thank you.

All right. As is my normal practice, I'm going to go ahead and start with asking the folks who are here to introduce themselves, who they're representing, and who will be primarily speaking or handling things today just so I know who to direct myself to.

And then if someone else needs to join in at some point, of course, that's fine. We can do that. But just, generally speaking, so I know how we've got everyone organized here.

So I'm going to start here and then work my way around so I know where everybody is.

Yes, sir.

MR. PINTO: Rick Pinto, Your Honor, Pinto Coates Kyre & Bowers, representing the Plaintiff in the crop protection litigation.

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1 **THE COURT:** And when you say "the crop protection,"
2 you are in the MDL; is that right?

3 **MR. PINTO:** The MDL.

4 **THE COURT:** I am just going to make sure I am not
5 confusing any of these things.

6 Yes, sir.

7 **MR. BURKE:** Good morning, Your Honor. Chris Burke
8 from Korein Tillery, also representing the MDL Plaintiffs.

9 **THE COURT:** Okay.

10 **MR. BURKE:** And I will be addressing a number of the
11 issues this morning involving the schedule and coordination,
12 along with Ms. MacLean.

13 **MS. MACLEAN:** Good morning, Your Honor. I'm Margaret
14 MacLean from Lowey Dannenberg for the MDL Plaintiffs.

15 **THE COURT:** Okay. Very good. So I have Mr. Burke
16 and Ms. MacLean mainly handling things here.

17 And then, Mr. Pinto, if we need anything for local
18 counsel's sake, then you're here to take care of that as well;
19 is that right?

20 **MR. PINTO:** Yes, ma'am.

21 **THE COURT:** Okay. Perfect.

22 And I will come over here.

23 Yes, sir.

24 **MR. WEISS:** Good morning, Your Honor. Jesse Weiss
25 from Cravath, Swaine & Moore on behalf of Corteva.

1 **THE COURT:** All right.

2 **MR. WEISS:** And I'll be doing the talking on behalf
3 of Corteva this morning.

4 **THE COURT:** Okay. Perfect.

5 **MR. WEISS:** And with me is Mark Anderson.

6 **MR. ANDERSON:** Good morning, Your Honor. Good to see
7 you.

8 **THE COURT:** Very good to see you as well.

9 Yes, sir.

10 **MR. McCLAMMY:** Good morning, Your Honor. Jim
11 McClammy of Davis Polk on behalf of the Syngenta Defendants,
12 and I will be doing most of the speaking on behalf of the
13 Syngenta Defendants. And with me is Pat Kane.

14 **THE COURT:** All right. Good morning, Mr. Kane.

15 All right. And so it's Mr. Weiss and Mr. McClammy.
16 And then over here?

17 **MS. MALTAS:** Good morning, Your Honor.

18 Allyson Maltas for the Federal Trade Commission.

19 **MS. GILLEN:** Good morning, Your Honor. Elizabeth
20 Gillen for the Federal Trade Commission.

21 **THE COURT:** All right. It's Gillen?

22 **MS. GILLEN:** Gillen, yes.

23 **THE COURT:** Okay. Perfect.

24 **MS. MALTAS:** And we'll both be speaking as needed on
25 behalf of the Government Plaintiffs.

1 **THE COURT:** All right. Very good.

2 Let me make sure I have myself organized here before
3 we get underway.

4 All right. So I have the information on the Rule
5 26(f) reports filed by the MDL folks as well as the
6 coordination proposals that were filed in both cases.

7 What I would like to do is just hear from everybody
8 regarding the issues that you want to raise just so that I have
9 a chance to hear from you.

10 I have reviewed the proposals; but before I start
11 diving in on the specifics, I think it might be helpful to just
12 let you all present your arguments and to make sure everybody
13 has a chance to be heard on that. I might have some questions
14 for you.

15 And then what I would intend to do is go ahead and
16 give you some initial guidance or thoughts. Depending where we
17 are at that point, I might take a break to let you all have a
18 discussion to see if there are other issues that I need to
19 address in light of that or if there are other concerns that
20 might be raised or agreements that you all might want to
21 present or propose. And then we'll come back and actually
22 finalize what the plan is going to be.

23 So, as always, I am going to go around until everyone
24 has had a chance to let me know everything that they want to
25 say. So I'll go in order, but I will come back around to make

1 sure everybody has had a chance to be heard.

2 Again, just going through sort of where we've got
3 everybody seated, I am going to start over here with the MDL
4 Plaintiffs. And then we'll go to the Defendants. And then
5 we'll go to the FTC folks. And then come back around again to
6 let everybody respond.

7 So are we starting with you, Mr. Burke, or
8 Ms. MacLean?

9 **MS. MACLEAN:** Sure, Your Honor, just to set the table
10 when it comes to the schedule --

11 **THE COURT:** Okay.

12 **MS. MACLEAN:** -- when we were here last month, you
13 will recall we talked a little bit about the importance for the
14 MDL Plaintiffs of receiving the FTC's investigative file to
15 help us get on a more informationally even footing with the
16 Defendants and with the Government. And that still has not
17 taken place, Your Honor.

18 And the reason for that has been a dispute over the
19 protective order that the Defendants have insisted that they
20 need in order to produce the documents and a single provision
21 in that protective order, which pertains to whether or not our
22 clients, the named Plaintiffs, the farmers -- individual
23 farmers who have filed this action, can see highly confidential
24 materials.

25 So, again, we're starting out here and we still have

1 not seen the FTC's investigative file. They are continuing to
2 serve new discovery all the time, which would probably at least
3 even double in volume from the millions of pages that they have
4 already gathered in their investigation.

5 **THE COURT:** Okay.

6 **MS. MACLEAN:** So we're getting further and further
7 behind.

8 **THE COURT:** So who's serving additional discovery?

9 **MS. MACLEAN:** The FTC.

10 **THE COURT:** Okay. So they are providing more
11 additional information, or they are serving more discovery
12 requests?

13 **MS. MACLEAN:** Upon the Defendants, I meant, Your
14 Honor, in the sense that more and more information -- we're
15 getting further and further behind with the Government is what
16 I am trying to express.

17 **THE COURT:** So the FTC is providing more and more
18 discovery or more and more documents to the Defendants?

19 **MS. MACLEAN:** Or is requesting more and more
20 documents from them that we'll have to review.

21 **THE COURT:** They are requesting more documents --
22 they haven't been produced yet, but they are requesting more
23 documents?

24 **MS. MACLEAN:** That's right, Your Honor.

25 **THE COURT:** Okay. All right. The main thing that we

1 were looking at originally was the FTC's original file; is that
2 right?

3 **MS. MACLEAN:** That's right, Your Honor, and that's
4 what we have not received yet either.

5 **THE COURT:** Okay.

6 **MS. MACLEAN:** So despite that, we've been trying to
7 negotiate a schedule, even without that information. And we
8 brought it down to, I think, the tightest that it could
9 possibly be, which is just three months behind where the FTC
10 is. We think that's, again, very reasonable in light of the
11 significant amount of information that we're going to need to
12 digest. We're talking about millions of pages of data that
13 we're going to need to ingest over here in order to even begin
14 to try to catch up with the schedule that the FTC is on.

15 **THE COURT:** All right. So with regard to the
16 protective order, I don't think that I have seen that dispute
17 come to me yet.

18 Is that something that you need resolution of? Can
19 you agree in the short term to let the production be attorneys'
20 eyes only and then come back to me for resolving the dispute on
21 that?

22 **MS. MACLEAN:** We are happy for that. We had proposed
23 initially that we should just simply agree attorneys' eyes only
24 among ourselves. The Defendants had wanted a formal protective
25 order entered.

1 We are willing to do an interim protective order. We
2 were just hopeful that we would not burden the Court with two
3 separate orders; but if that's the Court's preference, we are
4 happy to do that.

5 **THE COURT:** Whatever we need to do to get you what
6 you need to go ahead and get things moving I think would be the
7 thing to do. And so if we need to address something, we could.
8 If not, certainly to go ahead and get a protective order in
9 place, or I can go ahead and order it pursuant to the terms of
10 the protective order you all have otherwise agreed to but
11 leaving it attorneys' eyes only and then -- until a formal
12 order is entered, if that would be sufficient in the case.

13 **MS. MACLEAN:** That would be fine by us, Your Honor.

14 **THE COURT:** All right. So I see Mr. McClammy is
15 standing up.

16 Do you need to jump in, Mr. McClammy?

17 **MR. McCLAMMY:** If it might be helpful, Your Honor, I
18 have a couple points that may be worth addressing on this.

19 The Defendants did, in fact, when we were not able to
20 kind of come to full resolution on the protective order, offer
21 to have an interim order entered. We proposed that and thought
22 that would be easy to submit to Your Honor. We are, in fact,
23 still waiting for the Plaintiffs to actually submit that to the
24 Court.

25 The one real --

1 **THE COURT:** Well, regardless of where that is --
2 (Indiscernible cross-talking.)

3 **MR. WEISS:** -- exactly.

4 The one real issue, Your Honor -- sorry. The one
5 real issue is not just the turning over of our documents, but
6 to be able to get the third-party documents turned over to the
7 Plaintiffs as quickly possible, we need to notice the third
8 parties and to tell the third parties what protections will be
9 provided to those documents in the interim and to have that
10 kind of, like, clearly ordered.

11 So an agreement just between us that was off the
12 record wasn't going to be sufficient in order for us to do
13 that, which is why we wanted to have something entered by the
14 Court. I do believe the quickest way for that to happen is to
15 have the interim protective order issued, and then we can come
16 back to Your Honor if there still remains a dispute with
17 respect to a final protective order. I'm hopeful that we can
18 work out the -- work out those issues, though, with a little
19 bit more time.

20 **THE COURT:** Okay. All right. So whether I do it
21 orally now pursuant to the agreement you all have otherwise
22 reached or just ask you to submit the interim protective order,
23 it would be with the understanding that there's still a
24 potential dispute regarding whether that information should be
25 provided or shared to the individual Plaintiffs in the MDL; but

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1 until that issue is resolved, this is in place so that the
2 documents can go ahead and be turned over to the attorneys for
3 the MDL Plaintiffs.

4 Is that accurate, Mr. McClammy?

5 **MR. McCLAMMY:** I believe that should work. As long
6 as we have a clear order that we can point to so that we can
7 facilitate the process with the third parties, I think that
8 should be fine.

9 **MR. BURKE:** That's fine with the Plaintiffs, Your
10 Honor.

11 **THE COURT:** All right. So I guess we'll go ahead and
12 take these things as they arise.

13 On that issue, what I will do is go ahead and ask the
14 Plaintiffs to submit the interim protective order that includes
15 the agreed terms and the provisions that would provide for
16 attorneys' eyes only for the highly confidential information,
17 but understanding that that's being reserved for additional
18 further resolution, to the extent that there remains a dispute
19 on that point.

20 And whether we take that up on a document-by-document
21 or group-of-document-by-group-of-document case, I think it may
22 be easier to address that once you have the documents.

23 Mr. Pinto, do you have something that might be
24 helpful for me here?

25 **MR. PINTO:** It's a question. Do you want it in the

1 form of a motion and proposed order or just submission of a
2 proposed order?

3 **THE COURT:** A motion will actually help the clerk's
4 office, even though we've talked about it here. So if you
5 submit it with a motion with the proposed order, then they can
6 refer it over to me, and I can go ahead and adopt it that way.

7 **MR. PINTO:** Thank you.

8 **THE COURT:** Mr. Burke, did you have something else on
9 that?

10 **MR. BURKE:** Would you like the disputed areas
11 red-lined for the Court so you know what's in dispute, or how
12 should we handle that?

13 **THE COURT:** I think -- why don't you put that in the
14 motion that goes with it. So you can include that separately
15 in the motion. So then the proposed order that I am going to
16 sign is the interim protective order that is in place, and then
17 you can preserve the issue that's still in dispute in the cover
18 motion that goes with it.

19 **MR. BURKE:** Thank you, Your Honor.

20 **THE COURT:** All right. So I'm going to ask my clerk
21 to note the first thing that we need to include or designate
22 here is that the Plaintiffs will submit their motion and their
23 interim protective order -- when can you do that by, Mr. Burke?

24 **MR. BURKE:** We'll get that in tomorrow, Your Honor.

25 **THE COURT:** So that would be by May 24th.

1 And then I will get that protective order entered.
2 And then I would anticipate the Defendants will go ahead and
3 provide that to -- all of the documents that they have that
4 were part of the FTC investigation, including the third-party
5 documents, will be provided to the Plaintiffs on an
6 attorneys-eyes-only basis.

7 Mr. McClammy, do we need a time frame on that, or how
8 quickly can that happen?

9 **MR. McCLAMMY:** I believe we can get that done in a
10 matter of a day or two after we have the order entered.

11 **THE COURT:** Do you need some time --

12 **MR. McCLAMMY:** I'm sorry. With respect to the
13 Syngenta documents.

14 **THE COURT:** Right.

15 **MR. McCLAMMY:** We will have to provide 14 days'
16 notice to the third parties before we'll be able to turn over
17 their documents.

18 **THE COURT:** So I would say then by the middle of the
19 next week. Let's say by May 29th you'll have provided the
20 Syngenta and the Corteva documents.

21 And, Mr. Weiss, does that work for you as well?

22 **MR. WEISS:** That works for Corteva, Your Honor.

23 **THE COURT:** Okay. And then we'll give you two weeks,
24 which takes us to the next week. So let's say June 5th to
25 provide the third-party documents.

1 **MR. McCLAMMY:** And with that, Your Honor, I would
2 just ask that that be clear that we would provide them to the
3 extent that there have been no objections raised by the third
4 parties.

5 **THE COURT:** And then we'll need to resolve -- I
6 assume that you all have a provision for letting Plaintiffs
7 know if there's objections by the third parties so that that
8 can then be addressed or brought to the --

9 **MR. McCLAMMY:** Exactly, Your Honor.

10 **THE COURT:** All right. So by June 5th, you'll
11 provide the third-party documents on an attorneys-eyes-only
12 basis unless there are objections that should be brought to the
13 Court's attention.

14 **MR. McCLAMMY:** Thank you, Your Honor.

15 **THE COURT:** Okay. So, Ms. MacLean, I'm going to come
16 back to you then.

17 So I understand the first issue is trying to make
18 sure you get those documents. So, hopefully, we have a plan in
19 place to make sure that you get those documents now. And I
20 appreciate that you all come up with a schedule the best that
21 you can without actually having those documents. And so I
22 think that's helpful.

23 Now let's talk about sort of either the next issue or
24 the schedule, or however you want to present that for me next.

25 **MS. MACLEAN:** Sure. So I think Your Honor will have

1 seen there's really two dates of dispute when it comes to the
2 schedule. There's the deadline for substantial completion of
3 documents and which the Defendants have proposed the same date
4 as the D.C. action of January 22nd. And we've proposed
5 April 23rd, which -- and then, relatedly, the deadline for us
6 to notice Defendants' depositions -- or notice Defendants'
7 witnesses depositions, which Defendants have provided for a
8 deadline of February 21st, which is just one month out from
9 their proposed substantial completion deadline, which, from our
10 view, is simply not practical. Image a million-page document
11 deadline, January 22nd, that we have to review and still not
12 be -- have only one month in order to figure out who to notice
13 on the Defendants' end.

14 And so that just seemed to us overly aggressive,
15 again, given where we are, given the amounts of documents that
16 we're going to have to be receipting, ingesting, digesting, and
17 using in order to reach those deadlines, especially mindful of
18 the Court's instructions last time that we not come back asking
19 for additional time.

20 **THE COURT:** All right. So I have the chart here, I
21 think, with the competing dates. But just to make sure that
22 we've got them all clear, your proposal is the deadline to
23 notice fact depositions would be June 13th --

24 **MS. MACLEAN:** That's right, Your Honor.

25 **THE COURT:** -- rather than February 21st?

1 **MS. MACLEAN:** That's correct.

2 **THE COURT:** And the deadline for partially
3 completing -- or for substantially completing production is
4 April 23rd.

5 So you gave yourself an extra couple weeks in
6 there --

7 **MS. MACLEAN:** That's correct, Your Honor.

8 **THE COURT:** -- from their proposal.

9 Okay. And so you said that was -- or those are the
10 dates that are in dispute, the date for the substantial
11 completion of the production and the date for noticing the
12 witnesses. And that's really the primary issue that you've got
13 in terms of the schedule; is that correct?

14 **MS. MACLEAN:** That's correct, Your Honor.

15 **THE COURT:** Okay. All right. As far as the
16 coordination, because I am going to go through -- what are the
17 main issues that you want to highlight for the coordination?

18 **MS. MACLEAN:** I think Mr. Burke is going to take that
19 one.

20 **THE COURT:** Okay. All right.

21 **MR. BURKE:** Sure. Maybe I could, in a nutshell,
22 describe what we believe additional coordination would mean
23 here.

24 **THE COURT:** Okay.

25 **MR. BURKE:** So documents produced in the FTC case get

1 produced here. Documents produced in the MDL case get produced
2 in the FTC action.

3 **THE COURT:** Uh-huh.

4 **MR. BURKE:** In terms of written discovery,
5 interrogatories, responses in the FTC action, they are
6 obviously going to get that. We get the responses, too. What
7 we can do with those responses is going to be governed by the
8 Federal Rules of Evidence.

9 Same thing with the requests for admission: Issue
10 the requests for admission; to the extent we can use them, they
11 are going to be delimited -- our use is going to be delimited
12 by the federal rules.

13 Then we get to depositions. They have 15 party
14 depositions to take of Corteva, 15 party depositions to take of
15 Syngenta. We have the same. If they notice a deposition and
16 we notice a deposition, it comes off of each of our respective
17 numbers. We spend that.

18 We may not be up to speed and know whether we can
19 notice a deposition at a certain point in time. They take it
20 because we're still ingesting documents to get our arms around
21 the case. We may not come back and take that deposition. If
22 not, we can still use that testimony under, presumably,
23 804(b)(1), sworn testimony in another action. So our use is
24 delimited by the federal rules.

25 If we do want to try and take somebody twice, our

1 proposal is --

2 **THE COURT:** Real quick, if you were under that first
3 scenario, where it's the other action and you just use it that
4 way, then I'm assuming you're not present at that deposition;
5 you don't have any ability to ask any questions or be there?

6 **MR. BURKE:** We would have the ability to attend. We
7 wouldn't be asking any questions.

8 **THE COURT:** And why would you have the ability to
9 attend?

10 **MR. BURKE:** It's just simply how we set the
11 coordination order up.

12 **THE COURT:** Okay. But that may be. If you really
13 are not going to participate in that one and it's another
14 action, then --

15 **MR. BURKE:** But --

16 (Indiscernible cross-talking.)

17 **MR. BURKE:** -- admissibility --

18 **THE COURT:** -- to be consistent, yeah, you don't get
19 to be there.

20 **MR. BURKE:** And that may be our choice.

21 **THE COURT:** Right. If you want to be there, then you
22 got to cross-notice it to get to be there.

23 **MR. BURKE:** Correct.

24 **THE COURT:** All right. Okay.

25 **MR. BURKE:** And, now, let's take the example of they

1 notice somebody --

2 **THE COURT:** "They," the other Plaintiff, FTC?

3 **MR. BURKE:** I'm sorry. FTC has noticed somebody or
4 the States --

5 **THE COURT:** Right.

6 **MR. BURKE:** -- prior to December 6th -- and we came
7 up with that date, December 6th, because we felt like by that
8 time we'll have our arms around at least the initial FTC
9 production and perhaps some additional materials -- or we won't
10 have our arms around that until around December 6th. After
11 that date, we would.

12 So if the deposition is noticed before then, we would
13 be able to take that deposition, if we choose, of that person
14 at a later date.

15 **THE COURT:** Right. That's the proposal?

16 **MR. BURKE:** Correct.

17 **THE COURT:** Do you have any understanding from your
18 discussions -- and I will get to the FTC -- but whether they
19 are intending to start taking depositions before December 6th?

20 **MR. BURKE:** We don't know when FTC is going to be
21 taking depositions. And this may be a moot point --

22 **THE COURT:** Right.

23 **MR. BURKE:** -- because if they start after
24 December 6th, then we would have to show good cause to take
25 somebody twice.

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1 **THE COURT:** Right.

2 **MR. BURKE:** And we're fine with that.

3 **THE COURT:** Right. Okay.

4 So let's -- after your December 6th, or whatever --
5 the date we end up using, under the ordinary sort of situation,
6 what are you proposing?

7 **MR. BURKE:** After December 6th --

8 (Indiscernible cross-talking.)

9 **THE COURT:** Uh-huh.

10 **MR. BURKE:** -- in an ordinary situation, they notice
11 somebody. If we wanted to take them, we'd cross-notice them.

12 **THE COURT:** Uh-huh.

13 **MR. BURKE:** Okay. If we felt like at that time we
14 weren't sure but later on we come across documents that say,
15 oh, we need to take this person for different reasons -- for
16 instance, we have additional AI, active ingredients, in our
17 case, our case is broader --

18 **THE COURT:** Right.

19 **MR. BURKE:** -- we have to get over class
20 certification, so we need to show commonality, adequacy,
21 typicality, numerosity, predominance -- all those types of
22 things --

23 **THE COURT:** Okay.

24 **MR. BURKE:** -- we have to demonstrate impact, fact of
25 injury on a class basis -- we may need to take somebody twice.

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1 **THE COURT:** Okay.

2 **MR. BURKE:** And then we would go back to Syngenta or
3 Corteva and explain this is what we want to do. If they agree,
4 fine. If not, we bring the motion to Your Honor.

5 **THE COURT:** And so that's the good cause to try to
6 have a second deposition?

7 **MR. BURKE:** Correct.

8 **THE COURT:** Okay. And so in your scenario where
9 you've cross-noticed the deposition --

10 **MR. BURKE:** Uh-huh.

11 **THE COURT:** -- what's your proposal for how the time
12 is allocated?

13 **MR. BURKE:** Well, in practical terms, we and FTC will
14 work cooperatively to break up the time.

15 **THE COURT:** Okay.

16 **MR. BURKE:** We'll have a total of 14 hours or 13
17 hours? I think it's 13 hours for party, 14 hours for nonparty
18 if we notice the same nonparty.

19 **THE COURT:** Okay. To the extent you're working
20 together, that does seem like -- I mean, we're not really
21 saving a lot of time on that if we're just doubling it. But I
22 understand that's your proposal. It may be something that we
23 look at.

24 And, yes, ma'am, do you want to jump in?

25 **MS. MALTAS:** I just want to clarify.

1 **THE COURT:** Okay.

2 **MS. MALTAS:** So if we were both, the Government
3 Plaintiffs and the class Plaintiffs, to notice a Defendant
4 deposition, then that would be 13 hours. I believe that for
5 the third-party depositions, you would really only get up to 14
6 hours if all four of us were cross-noticing a third party.

7 **THE COURT:** Okay. So what I may do is go through and
8 let everybody explain, and then we'll see where we are with how
9 it all breaks out.

10 So you're adding either an additional six or seven
11 hours for the cross-notice situation?

12 **MR. BURKE:** Correct.

13 **THE COURT:** Okay. And is -- how do you allocate the
14 Defendants' time in that?

15 **MR. BURKE:** Well --

16 **THE COURT:** I mean, all of that is Plaintiffs' time.

17 **MR. BURKE:** Well, the Defendants are going to have an
18 opportunity -- if it's a party deposition?

19 **THE COURT:** Sure. Right.

20 **MR. BURKE:** Sure. The Defendants -- in my
21 experience, the Defendants either ask no questions or, at most,
22 they have an hour --

23 **THE COURT:** Right.

24 **MR. BURKE:** -- of questioning.

25 **THE COURT:** So what if it's -- they don't

1 cross-notice it, but it's just a third-party deposition?

2 **MR. BURKE:** They're still going to have time to ask
3 questions in third-party depositions. The non-noticing party
4 will still have time.

5 **THE COURT:** Right. So same thing, an hour of the
6 time?

7 **MR. BURKE:** Correct.

8 **THE COURT:** Okay. All right. And then if the --
9 again, under your prior scenario, if it's not cross-noticed,
10 then that party may have to choose not to attend at all.
11 Certainly, can't ask any questions.

12 **MR. BURKE:** That's right.

13 **THE COURT:** You would just use it the way you would
14 any other separate-case deposition would be your proposal?

15 **MR. BURKE:** That's right.

16 **THE COURT:** Okay. And so with respect to
17 depositions, I think you've covered everything.

18 It looked like you all agreed on the numbers; is that
19 right?

20 **MR. BURKE:** We have.

21 **THE COURT:** That was 15 and 40; is that right?

22 **MR. BURKE:** Yes.

23 **THE COURT:** All right. Mr. Weiss?

24 **MR. WEISS:** Your Honor, Jesse Weiss for Corteva.

25 I just want to clarify we did agree on the numbers,

1 and we'll come to this when we talk about coordination and our
2 perspective on it.

3 **THE COURT:** Right.

4 **MR. WEISS:** But those numbers that we agreed to we
5 think are baked in kind of the coordination framework that we
6 think should apply here because our concern, which we'll
7 address more, is that the framework that they're looking to
8 apply is going to result in them getting a lot more than those
9 numbers.

10 **THE COURT:** And I will -- I understand. So I will
11 come to you on that. I understand --

12 **MR. WEISS:** I just want --

13 **THE COURT:** -- the agreement may be conditioned on
14 how it gets divided up?

15 **MR. WEISS:** That's right, Your Honor. Exactly.

16 **THE COURT:** All right. Mr. Burke, I think that
17 covers the written discovery and the depositions.

18 Was there anything else in terms of the coordination
19 that might be helpful?

20 **MR. BURKE:** No, I can come back to things if they get
21 raised.

22 **THE COURT:** Okay. All right. And you've highlighted
23 the main issues in terms of where the disputes are that you
24 wanted to highlight; is that right?

25 **MR. BURKE:** That's right.

1 **THE COURT:** Okay. All right. So I am going to come
2 over here.

3 Mr. Weiss, did you want to pick this up in terms of
4 Defendants' perspective?

5 **MR. WEISS:** Yes, thank you, Your Honor, happy to do
6 that.

7 Jesse Weiss for Corteva.

8 **THE COURT:** Yes.

9 **MR. WEISS:** We can start on the schedule.

10 **THE COURT:** Okay.

11 **MR. WEISS:** So we think it's really important that
12 there's some alignment on certain aspects of the schedule in
13 order to facilitate coordination. If they are three months
14 behind on everything, it's going to make coordination, I think,
15 very difficult.

16 **THE COURT:** Uh-huh.

17 **MR. WEISS:** So we had sought to strike a compromise.
18 Originally, we had proposed the dates that were aligned with
19 the FTC's schedule in order to facilitate that coordination.
20 We now are just aligning really two dates that we think are
21 very important: One is substantial completion of party
22 discovery, and the other is the date on which to notice party
23 depositions. And for third parties, if they need more time,
24 that's incorporated into our schedule.

25 **THE COURT:** Just to make sure we're talking about the

1 same dates, you're talking about -- I think Ms. MacLean
2 highlighted the January 22nd production date and the
3 February -- was it the February 21st date for noticing fact
4 depositions? Are those the same two dates that you're talking
5 about, or which dates are you looking at?

6 **MR. WEISS:** That's correct, Your Honor. Under our
7 schedule, it would be January 22nd for all parties to
8 substantially complete production of documents and data.

9 **THE COURT:** Okay. And that's the one that they want
10 April 23rd on, and that's just the production of written
11 discovery essentially, is that right, or production of --

12 **MR. WEISS:** And documents and data.

13 **THE COURT:** Okay. Right.

14 **MR. WEISS:** That's right. That's their April 23rd
15 date. And January 22nd is our proposal, which is aligned with
16 the schedule in the FTC case.

17 **THE COURT:** Right. Okay.

18 **MR. WEISS:** And then the deadline to notice party
19 depositions would be February 22nd in our proposal, which is
20 the same date -- the same deadlines to notice all depositions
21 in the FTC case.

22 And June 13th for nonparty depositions, which is
23 the -- June 13th is the date that they proposed for all -- as
24 the deadline for noticing all depositions.

25 **THE COURT:** Does having that extra time give you

1 extra time to depose the Plaintiffs? Is that -- or what's
2 happening, in your perspective, during that time from
3 February -- because if it's -- are we talking just Defendants
4 by February 21st or all parties, or who is it that you're
5 anticipating is happening between February 21st and June 13th?

6 **MR. WEISS:** Our anticipation is that that is mainly
7 for third party -- that's for third-party discovery.

8 **THE COURT:** Okay. Third-party discovery but that the
9 FTC hasn't already taken, essentially?

10 **MR. WEISS:** Correct.

11 **THE COURT:** Because if the FTC has taken it and it's
12 either -- it's been cross-noticed or it's a second deposition
13 situation, there would have to be good cause to take it if
14 they've already taken it.

15 **MR. WEISS:** That's correct, Your Honor, absent a
16 showing of good cause or by Your Honor --

17 **THE COURT:** Right. Then it would be only third
18 parties that the FTC hasn't already taken --

19 **MR. WEISS:** That's correct, Your Honor.

20 **THE COURT:** -- at that point during that period of
21 time.

22 All right. So that's your position on the dates.

23 I'm presuming that the main dispute or the main
24 driving force for the January 22nd is that you only have to do
25 one search term run; is that right? Or what is the issue?

1 **MR. WEISS:** It's really just to -- it's to align
2 discovery and create incentives and allow for coordination
3 between the actions on the common issues and the common facts
4 and the common witnesses. And, you know, our main concern is
5 the Defendants' witnesses.

6 And so it facilitates, you know, the coordination
7 between the FTC and the private Plaintiffs, so aligning on
8 dates that they will notice party depositions. If they're
9 three months behind, it makes that coordination much more
10 difficult.

11 And with respect to the documents, you know, they
12 want to have a procedure where they can come back to the Court
13 and say, If we have good cause, we can take a second
14 deposition. If there are more documents being produced, you
15 know, three months more of discovery, it just creates an
16 unnecessary risk for us that they're going to come back and
17 say, Here's three more documents that are produced in this
18 additional three-month window that we don't see as necessary.
19 Now there's good cause, and now our witnesses are getting
20 deposed a second time.

21 **THE COURT:** Okay.

22 **MR. WEISS:** So it just creates all, you know, the
23 wrong incentives, and we think it's the wrong framework to
24 apply.

25 **THE COURT:** All right.

1 **MR. WEISS:** We also don't quite understand their
2 justification.

3 The investigative file, we'll be producing it very
4 soon pursuant to -- once the protective order is entered.
5 That's -- you know, the time between that production and the
6 deadlines that we propose here is about nine months. That's a
7 long period of time. In a normal case, nine months would be a
8 long period of time. In this case, the fact that there's this
9 investigative file shouldn't result in a delay. It should
10 actually accelerate things. In a normal case, they wouldn't
11 have that investigative file. So we don't quite understand the
12 logic there.

13 Ms. MacLean noted that the FTC has issued new, you
14 know, discovery requests. Those were issued in April. We just
15 served our responses and objections. We met and conferred over
16 it. But those are documents that aren't going to be produced
17 for some time. So we don't think that that puts them further
18 behind. They will get those documents when we produce them.
19 We believe that a coordination order should have that
20 provision. So we assume they'll get those documents as well.

21 So we think that those two dates need to be aligned.

22 Now, we recognize that for coordination it may be
23 that the deadline for noticing depositions could be maybe two
24 weeks later. There's -- in our proposal there's 10 days to
25 cross-notice. So maybe we bake in those 10 days or 14 days in

1 order for them to see, oh, the FTC has noticed these
2 depositions right at the deadline. We need an additional 10
3 days to coordinate our cross-notice. You know, we can imagine
4 that being in there.

5 But if the dates aren't substantially aligned, we
6 think that coordination here is going to be really difficult,
7 and it creates these unnecessary risks for the Defendants.

8 **THE COURT:** Okay. And, actually, before we go to
9 you, Mr. McClammy, Mr. Weiss, did you want to speak to the
10 coordination as well in terms of the proposal that Mr. Burke
11 gave me?

12 **MR. WEISS:** I do want to speak to that. I'm happy to
13 give Mr. McClammy an opportunity just to quickly address the
14 schedule so we can put that issue to the side and then keep
15 moving on to the other issues.

16 **THE COURT:** All right. That's fine, however you all
17 want to do that.

18 Mr. McClammy?

19 **MR. McCLAMMY:** Thank you, Your Honor. Jim McClammy
20 again for the Syngenta Defendants. I'll be brief because I
21 think Mr. Weiss covered a good portion of it.

22 I do think that as the Defendants are looking at
23 this, we would like to have the schedule in the MDL action be
24 such that coordination, which everybody, I think, has agreed is
25 something that we should be working towards, is, in fact,

1 possible.

2 With respect to the substantial completion date, I
3 think the one thing that -- the one portion of the Plaintiffs'
4 response to that that I would take issue with is there may be
5 millions of documents coming in on, like, the very last day.
6 One, we would work obviously to not have that happen. But,
7 two, they're getting a good portion of it right up front and
8 much quicker than we would get in a normal case. They are
9 having the benefit of the investigative file. So they'll have
10 that. They will process it.

11 And I'm hopeful that they will be coordinating with
12 us as we're talking with the FTC about additional searches and
13 custodians that may be done for the production of documents so
14 that we're running that all at the same time. And then they
15 will be receiving these documents at the same time as the FTC.

16 And as Your Honor has already found, you know, the
17 dates are workable for substantial completion in January with
18 noticing at the very least of the party Defendants -- the
19 defense, you know, witnesses in February. So we would propose
20 that same kind of, like, reasonable standard there.

21 And then as -- as Mr. Weiss has noted, allowing for a
22 little bit of extra time for them to the extent that they may
23 have one of their third parties that they would like to take
24 and to have some additional time on the back end, you know, to
25 have that all happen so that the schedule here is a little bit

1 extended beyond what is in the FTC's action, you know, the
2 Defendants are agreeable to that.

3 **THE COURT:** Okay. And that may be something I take
4 up with the FTC folks, because I think there is this issue
5 about closing discovery and when discovery closes and how that
6 works and whether there would be anything that would actually
7 be taken during that period of time after what you would
8 propose would be February 21st for the notice and, I guess,
9 ultimately the difference between April 22nd and July 25th for
10 getting all of those done. Right?

11 **MR. McCLAMMY:** That's correct.

12 **THE COURT:** All right. Anything else you wanted to
13 add?

14 **MR. McCLAMMY:** That's all for now, Your Honor.

15 **THE COURT:** All right. Mr. Weiss, did you want to
16 come back to address the coordination issues?

17 **MR. WEISS:** Yes, thank you, Your Honor. Jesse Weiss
18 for Corteva.

19 So, you know, as we see it, the key issue here is
20 coordination should facilitate efficiency, reduce duplicative
21 discovery. It shouldn't be added into the discovery limits
22 that the Court's order, that we're aligned on with the MDL
23 Plaintiffs, set out -- what's been ordered in the FTC action.

24 Their proposal does that. It does it in a couple of
25 ways. One with -- and Mr. Burke said that the discovery will

1 be used pursuant to the Federal Rules of Evidence and the
2 Federal Rules of Civil Procedure. Our understanding is that
3 for a lot of discovery that means it's effectively, you know,
4 in their action. And so their order -- you know, their
5 coordination order would set up a framework where they're
6 participating in -- or they're sitting in depositions, but it
7 doesn't count against them.

8 I understand Your Honor asked, well, will you sit in
9 the depositions? We understand their proposal be that they
10 can.

11 **THE COURT:** So let's assume then I say they can't.
12 If they don't cross-notice it, they can't be there; but if
13 they're not there, then I think the ordinary rules would apply.
14 And you can argue whether it's admissible or what it should be
15 admissible for, like you would any other deposition in a
16 separate action; right?

17 **MR. McCLAMMY:** I think that's right, Your Honor.
18 Then we're not really talking about coordination, I think. If
19 we're -- if they are -- either these are separate actions
20 without coordination or they are separate actions with
21 coordination; in which case, we think it makes sense that they
22 can sit in on depositions and they're sharing of discovery, but
23 it should just count against the limits, or the limits should
24 reflect that they are separate actions without coordination.

25 **THE COURT:** Well, you know, the limits are what they

1 are, which are obviously higher than what would be in an
2 ordinary case, but each one on its own sort of is a complex
3 case.

4 The coordination, though, essentially requires them
5 to count it as one of theirs if they want to participate in it.
6 So if they want to come and be there at all, let alone ask
7 questions, then they have to count it as their one. If they
8 don't, then they don't. It doesn't count as their one. And
9 then to the extent -- I mean, they still can see it, like they
10 would -- anybody could see a copy of it. And then it would be
11 ultimately up to the Court how or whether you use it like you
12 would any other testimony from some other case.

13 I am concerned about some sort of idea where I would
14 impose some preclusion now on them being able to use something
15 that they're not even there for or that they've made the
16 decision not to participate in that then becomes preclusive
17 just as a scheduling or as a management issue.

18 **MR. WEISS:** That's understood, Your Honor.

19 I think the -- there is coordination happening.

20 **THE COURT:** Right.

21 **MR. WEISS:** It's in the joint coordination order. So
22 there is coordination happening.

23 **THE COURT:** Right.

24 **MR. WEISS:** And I think as a practical matter, there
25 will continue to be coordination. It's why we're all in this

1 courtroom.

2 **THE COURT:** Right.

3 **MR. WEISS:** And so, you know, for us, we think that's
4 going to result in the type of coordination we're concerned
5 about, which is inefficient and adds to their discovery and not
6 the type of coordination that I think is intended by a
7 coordination order, which is to eliminate duplicative
8 discovery, not create an imbalance and add to the discovery
9 that each party gets.

10 **THE COURT:** But at this point if the order says, you
11 know, if you want to participate, you have to cross-notice it
12 and the same witness can't be deposed twice without good cause,
13 then essentially all you're really concerned about is the total
14 number being high; is that right? I mean, that's really it;
15 right?

16 **MR. WEISS:** That's it, Your Honor, exactly. It's the
17 limits. Do those limits bake in coordination? In which case,
18 I think the limits are -- the limits that have been set are
19 high. Our understanding of the limits set in the FTC action
20 were in contemplation that there would be coordination, but
21 there would be efficiencies to reduce duplicative discovery.
22 And that's reflective in our proposal -- in our 26(f) report as
23 well with the MDL Plaintiffs.

24 **THE COURT:** So if I said 15 per Syngenta and Corteva,
25 which is already kind of adjusted based on who they had

1 anticipated -- and I think this one actually may be 40 for
2 third parties, rather than 30 -- if it should be 30 instead,
3 with the idea or understanding that there's still the rule that
4 second deposition requires good cause -- and I'll take up
5 separately this issue of when things get scheduled or how that
6 might affect it, but second deposition requires a showing of
7 good cause, and if you want to be there and participate, then
8 you have to cross-notice, then is it just an issue of okay,
9 well, then if that's the case, we want 30 instead of 40
10 third-party depositions here or some other adjustment on that?

11 **MR. WEISS:** I think in principle that's right. We
12 proposed a framework and a mechanism to allow for coordination
13 without increasing the limits. If that mechanism doesn't work,
14 another mechanism that could work is to reduce the numbers, the
15 specific numbers.

16 I think we'd have to -- that wasn't our proposal and
17 not the mechanism that we proposed. It is a mechanism also
18 that can work to address our concern that there will be
19 coordination, whether -- that isn't the type of coordination
20 that we think, you know, is going to facilitate efficiency here
21 and is going to result in more discovery than the limits
22 provide.

23 **THE COURT:** I think the issue I have is trying to put
24 in place preclusion orders now precluding use of depositions
25 that are being taken in another case. It has a lot of

1 ramifications that may need to be considered or addressed and
2 really doesn't seem like the best way now to address the limit
3 issue.

4 And so if the issue with that -- the reason that you
5 want to preclude that is because you figure there are too many,
6 then we can look at, okay, well, what's the too many number,
7 rather than trying to come up with some sort of other rules
8 that may have substantive impact later in terms of not being
9 able to use depositions that otherwise you're allowed to use
10 under the federal rules, creating unnecessary complications for
11 us down the line. So that's why I'm headed in that direction
12 or looking at it in that way.

13 One thing I also wanted to clarify -- and I think
14 everybody understands or understood this, but just to make
15 sure, my assumption is that if the Defendants notice a
16 deposition, that the Plaintiffs don't have to cross-notice it
17 to be there to participate and to have, as Mr. Burke would say,
18 maybe an hour or at least the ability to be present and have
19 what would ordinarily be in a deposition just the follow-ups
20 that you might do as defending the -- even if you're not --
21 even if it's a third party, as opposed to, no, I want a chance
22 to actually have a substantive share of the time, so I am going
23 to cross-notice it, too, for this third party.

24 So that's my -- that was my intent when I talked
25 about cross-noticing. I wouldn't expect that if Defendants

1 notice someone, that the Plaintiffs have to cross-notice it or
2 can't attend or -- I think the same rule would apply for not
3 having a second deposition. You can't do a second deposition
4 without good cause, but that they would be able to attend and
5 have their sort of 30 minutes or an hour at the end if the
6 Defendants are the ones that are noticing it.

7 **MR. WEISS:** And we agree with that, Your Honor.

8 **THE COURT:** Okay.

9 **MR. WEISS:** And if this were just one case, that's
10 the rule that would apply.

11 **THE COURT:** Right.

12 **MR. WEISS:** In the FTC case --

13 **THE COURT:** Right.

14 **MR. WEISS:** -- you know, you would have that rule
15 apply.

16 In the MDL case --

17 **THE COURT:** Right.

18 **MR. WEISS:** -- the question is, if the MDL Plaintiffs
19 are sitting in a deposition that they didn't notice that's
20 happening in FTC case, what are the implications of that?

21 We're okay if we have a coordination framework that
22 works that doesn't create the issues that we've outlined.

23 **THE COURT:** Okay. So just thinking through that, so
24 the Defendants have noticed it. I assume that the Defendants
25 will want the option to use it in both cases.

1 Will the -- that the Plaintiffs for both cases would
2 be able to attend, maybe collectively have an hour -- 30
3 minutes each or an hour, however they choose to divide up their
4 time between them. But then that's counting for Defendants.
5 It's not counting for Plaintiffs. Right?

6 **MR. WEISS:** That's exactly right. If we notice a
7 deposition in both actions, the Plaintiffs in both actions can
8 attend and, you know, participate in that way --

9 **THE COURT:** Right.

10 **MR. WEISS:** -- as they would if it were just one
11 action.

12 **THE COURT:** Right. Okay. I think everybody is on
13 the same page with that then. I just wanted to clarify and
14 make sure.

15 So we've talked about depositions. Anything else you
16 wanted to talk about with depositions or how those are
17 coordinated?

18 **MR. WEISS:** I think a couple of things.

19 On the burden shifting, Your Honor, that's a standard
20 that doesn't make sense to us or really work. If there's good
21 cause to take a second deposition, it's in a situation where
22 there would be because there's going to be a lot of discovery,
23 you know, on the same timetable as the FTC. But if there is
24 good cause, they can come and seek relief from the Court.
25 Putting the burden on us at any point in time doesn't make

1 sense.

2 **THE COURT:** Okay. Go ahead.

3 **MR. WEISS:** Thank you.

4 And the deposition -- I'm happy to address any
5 questions on that particular point.

6 **THE COURT:** Go ahead and you can finish. I do have
7 one other thing I was going to follow up on, but you may be
8 getting ready to address it.

9 **MR. WEISS:** Yeah, on deposition time?

10 **THE COURT:** Yeah, that's it, yes.

11 **MR. WEISS:** Exactly. We proposed nine hours, they
12 proposed 13 for party depositions.

13 **THE COURT:** Uh-huh.

14 **MR. WEISS:** I think what their proposal essentially
15 says is that there is one hour of, you know, common issues, and
16 then there are basically two separate depositions. And that
17 doesn't -- I mean, that's just not the reality of this case,
18 and it doesn't make sense to us and is not an efficient
19 process.

20 Nine hours, if everyone has got the stamina, it can
21 be done in a day. It's a long day, but at least it leaves open
22 that possibility. And we think that given the substantial
23 overlap in issues -- there are some differences, but given the
24 substantial overlap in issues, that that's going to -- you
25 know, that's an equitable way to coordinate around, you know, a

1 party deposition and the number of hours that is there.

2 And we see a precedent they've cited. You know,
3 there's some with ten and some with 11. There's -- you know,
4 there are different ways to do this in different cases. We
5 think nine hours has the benefit of at least opening the
6 possibility of at least doing it in a day, and there's really
7 substantial overlap that we think makes that a workable number.
8 Thirteen to us, if that's two depositions --

9 **THE COURT:** Right. Just to tell you sort of my
10 initial impression on that, I think that if I were -- and I'll
11 hear from everybody. I'm not making a decision on that. But
12 my initial thought on that was 11 hours might make sense. An
13 hour of that is the Defendants'. If you want to give up your
14 hour and push through with a 10-hour day, you know, more power
15 to you. Otherwise, you know, it limits itself to a day and a
16 half which then can stagger with another day-and-a-half
17 deposition and get you at least some efficiencies that way.

18 I think that would be sort of just a general thought
19 in terms of the times that you all are talking about, but we
20 can come back to that certainly as well.

21 Anything else that you wanted to add?

22 **MR. WEISS:** There were -- yeah. Thank you, Your
23 Honor. I think there were a couple of other issues flagged as
24 disputed issues. I don't know if Mr. Burke covered all of
25 them.

1 **THE COURT:** Did you want to talk about written
2 discovery?

3 **MR. WEISS:** Sure, Your Honor.

4 So on written discovery, I think the same kind of
5 principles and framework that we have been discussing apply.
6 We have the same concern, right. They have effectively 16
7 interrogatories in one case, 16 interrogatories in another. We
8 have 16 interrogatories in one case, 16 interrogatories in
9 another. As we understand the proposal, it's up to 120, and
10 120 on each side. So we were proposing a mechanism to not have
11 that imbalance.

12 Another way to achieve that, I think, as Your Honor
13 suggested, would be to reduce the numbers that --

14 **THE COURT:** See, on that one it is a little different
15 because you're essentially within what the local rules would
16 have for an exceptional case. We're not doing such huge
17 increases as compared to -- or the way we are with the
18 deposition numbers. And so my concern on that is that may
19 require a lot of micromanaging even on my part in terms of
20 which ones count or which ones don't count or which ones are
21 the same or not the same, where, if everybody wants to just
22 propose their -- or submit your interrogatories and their
23 requests for admission, you all answer them. If they are
24 similar, then your answer can be used again for all of them.
25 And then each side gets their own, but copies of the others to

1 use like you would in some other separate case so that we don't
2 get bogged down in reviewing interrogatories.

3 That's -- that's at least my thought on that.

4 **MR. WEISS:** Yeah. That's understood, Your Honor. I
5 think two things. One is the -- I mean, the similarities with
6 our -- that's the kind of coordination that we want.

7 **THE COURT:** Right.

8 **MR. WEISS:** It's more, as a practical matter, whether
9 it's expressed or just -- it's just a natural way -- you know,
10 thing to do is -- if the FTC issues, you know, 15
11 interrogatories, and the MDL Plaintiffs see that those are
12 well-formulated questions or those are questions that we would
13 ask, we're not going to have to dip into our count for that.

14 So it leads to getting a lot more interrogatories
15 across the two actions than the exceptional case would give
16 them. So it does inflate their numbers well beyond, I think,
17 what the limits are in an exceptional case and what we think is
18 equitable here.

19 **THE COURT:** Okay. All right. So that's something to
20 think about or take into account as well.

21 Anything else you wanted to address? Any other
22 issues?

23 **MR. WEISS:** I think just a minor issue on deposition
24 scheduling. It's technically a disputed issue. I don't think
25 this is a significant one, but -- or one that we probably

1 couldn't get alignment on with more meet-and-confers. It's the
2 question of just how -- you know, when they notice a
3 deposition, what is the process of, you know, getting a date
4 that's mutually convenient for everyone.

5 **THE COURT:** Right.

6 **MR. McCLAMMY:** Their proposal -- and it's really just
7 the language here. It's "shall within three business days of
8 receiving notice provide one alternative date." I expect that,
9 you know, everyone will move promptly to provide alternative
10 dates if the date doesn't work, and it will be -- there will be
11 cooperation on that. But being under a court order to provide
12 a date within three days, it strikes us, A, as unnecessary and,
13 B, just --

14 **THE COURT:** Sometimes not practical.

15 (Indiscernible cross-talking.)

16 **MR. McCLAMMY:** -- schedule --

17 **THE COURT:** Right. Dependent on getting ahold of the
18 individual and the client to be deposed.

19 I think while it makes more sense to add a little
20 time in, you know, that within a week, but maybe offer a couple
21 of days instead of just one alternative date so, you know, we
22 increase the odds that we're going to find an option that works
23 for everybody.

24 And I think that the primary coordination is going to
25 need to be between the noticing party and the recipient,

1 whether it's a party or a third party. There are lots of
2 lawyers here who can adjust their schedules to be present, and
3 so I assume that we're not going to get hang-ups for scheduling
4 things because a particular attorney needs to be present or we
5 can't find somebody else to cover it, but that there's going to
6 be some cooperation between the noticing party and whoever the
7 recipient is to try to get that scheduled.

8 **MR. WEISS:** I think we see it as exactly the same
9 way. I think there will be that cooperation. I think we're
10 really talking about the parties -- you know, the witnesses'
11 schedule --

12 **THE COURT:** Right.

13 **MR. WEISS:** -- and just being under an order to
14 provide an alternative within three -- our proposal was, you
15 know, use best efforts and no party may unreasonably delay.
16 And I think that that, you know, solves concerns about, you
17 know -- which we never do, but strategically, like, trying to
18 push things around.

19 So that's -- I think that's the only other standing
20 issue on the coordination order.

21 **THE COURT:** And it may be we -- it's ordinarily or
22 the expectation is that within a week alternative dates would
23 be provided, or something that gives you all what I expect is
24 the freedom to be able to work cooperatively and to do what you
25 need to do to get things scheduled, but also some indication of

1 what the expectation is so that everybody understands when it
2 comes back that I might have concerns if it's -- hasn't been
3 tracking along what would ordinarily be expected on that.

4 **MR. WEISS:** That seems sensible, Your Honor.

5 **THE COURT:** All right.

6 **MR. WEISS:** Thank you.

7 **THE COURT:** Anything else, Mr. Weiss?

8 **MR. WEISS:** I think that's it.

9 **THE COURT:** All right. Mr. McClammy, anything else
10 you needed to follow up on any of those things?

11 **MR. McCLAMMY:** Again, for the record, Jim McClammy on
12 behalf of the Syngenta Defendants.

13 Not much to add, Your Honor. I think Syngenta's
14 position all along has been that we would like to have a
15 schedule and a coordination order that really incentivizes and
16 promotes coordination where it's possible and where it makes
17 sense in these actions. And I think having, as we talked
18 about, the schedule match up a bit on parts of it will help
19 with that.

20 And I think our concern when we saw the Plaintiffs'
21 proposal was that it created a situation where they may have
22 the benefits of all of the discovery from the various actions
23 without actually having to count it towards what they wanted to
24 do.

25 So on the depositions, as I think Your Honor is there

1 already, that if they were able to sit in, they could influence
2 the questioning in those depositions without actually having to
3 take it and having it count, and they could have, you know, the
4 benefit of 30.

5 If it was requests for admissions or interrogatories,
6 if they are not coordinating in advance of serving them and
7 they just serve their own, then maybe that's fine to have, you
8 know, what would be 30 and 30. But if they are coordinating in
9 advance and one side is saying here's our 30 questions, do you
10 have 30 more questions, that's not the situation we want to be
11 in when we were thinking of working towards coordination.

12 So I think, you know, with that, I join in what
13 Mr. Weiss is saying.

14 **THE COURT:** Okay. All right. That's helpful. Thank
15 you.

16 All right. Let me come over to the FTC.

17 **MS. MALTAS:** Thank you, Your Honor. Allyson Maltas
18 from the FTC but on behalf of all Government Plaintiffs.

19 **THE COURT:** Okay. Very good.

20 **MS. MALTAS:** So just running through everything,
21 first of all, on the issue of the schedule for the MDL case,
22 obviously, we take no position. I did just have some
23 information that I thought just might be relevant to Your Honor
24 thinking through the disputes.

25 As Defendants noticed, we have served requests that

1 are more comprehensive requests for documents and data to both
2 Defendants. Their responses and objections were served on
3 Monday. And we will be meeting and conferring with them about
4 custodians, search terms, and their objections next week.

5 **THE COURT:** Okay. So a couple of things on that.
6 These are not yet interrogatories or requests for
7 admission, just requests for production?

8 **MS. MALTAS:** Yes.

9 **THE COURT:** Okay. I thought search terms were
10 happening later, and we were going to come back around.
11 There's a separate deadline for when you all discuss and agree
12 and have to move to compel on search terms.

13 **MS. MALTAS:** So that actually is baked into that part
14 of it. So they -- the Defendants provided their search
15 terms/custodians -- and, I believe, Corteva is suggesting
16 TAR -- proposal along with their responses and objections. And
17 so our deadline to move to compel on everything is June 19th.

18 **THE COURT:** So I'm looking at your schedule, though,
19 and just thinking about lining everybody up, because the
20 motions to compel regarding custodians and search terms was
21 August 30th and proposing custodians and search terms July 31st
22 when we count dates from when the protective order was entered.

23 So your Exhibit A had dates from when the protective
24 order was entered. And that would give you a deadline for
25 propounding requests for production -- let's see where I am

1 getting these from.

2 **MS. MALTAS:** So, Your Honor, I believe that the
3 deadline for parties to agree or move to compel on custodians
4 and search terms and TAR protocols is 60 days after the service
5 of the requests for production. So since we served our
6 requests for production the day after we were last here, we
7 calculate that as being due on June 18th.

8 **THE COURT:** Okay. And I think where I may have
9 gotten a different calculation is I used the deadline for the
10 parties to propound requests for production as the deadline
11 governing everything. So I'm -- are you going to do any more
12 requests for production? I'm assuming you're not doing
13 multiple rounds of search terms for them; right?

14 **MS. MALTAS:** So our agreement with the Defendants and
15 the way that it's set out is that we have a deadline to submit
16 all of our comprehensive requests for production and data.

17 **THE COURT:** Right.

18 **MS. MALTAS:** We have the right to, and both sides, do
19 follow-up --

20 **THE COURT:** Right.

21 **MS. MALTAS:** -- if interesting things are found, but
22 we kind of need, like, a good cause to do that.

23 So we have served our comprehensive requests.

24 **THE COURT:** So I had a -- the date, just based on the
25 deadlines for parties to propose requests for production, was

1 45 days after production of the investigative file, which was
2 14 days after the entry of the protective order, which is where
3 I just assumed --

4 **MS. MALTAS:** Okay.

5 **THE COURT:** -- that date became July 1st for your
6 deadline for requests for production.

7 You've already done that?

8 **MS. MALTAS:** Yes.

9 **THE COURT:** Okay. So -- and that was -- when was
10 that?

11 **MS. MALTAS:** April 19th.

12 **THE COURT:** April 19th. Okay. And then the proposal
13 for custodians and search terms came back to you then already?

14 **MS. MALTAS:** Yes.

15 **THE COURT:** When did that come back?

16 **MS. MALTAS:** That came back on May 20th, so this past
17 Monday.

18 **THE COURT:** Okay. And so any motions to compel
19 regarding custodians and search terms would then be due another
20 30 days. So June 20th or so?

21 **MS. MALTAS:** 18th, 19th, somewhere around there.

22 **THE COURT:** Okay.

23 **MS. MALTAS:** And that was just one point.

24 I kind of wanted to pick up from something

25 Mr. McClammy said which was a surprise to me. The MDL

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1 Plaintiffs are not involved in this. These are ours. We were
2 told by Your Honor, told by Judge Schroeder our case should not
3 be slowed down by the MDL case. It's not been. We served
4 these.

5 So the MDL Plaintiffs are not coming to our search
6 term negotiations next week.

7 **THE COURT:** Right.

8 **MS. MALTAS:** So, again, we take no position on what
9 their schedule should be, but just in terms of what Your
10 Honor's expectations are, the MDL Plaintiffs are not involved
11 in this.

12 **THE COURT:** Okay. And based on that time frame,
13 clearly could not be. I mean, there's no way for them to get
14 involved. So it's necessarily going to involve a separate
15 round of searching if there are other search terms that they
16 want for their requests for production.

17 **MS. MALTAS:** Yes, Your Honor.

18 **THE COURT:** Okay.

19 **MS. MALTAS:** They will, of course, have the benefit
20 of everything that's produced by the Defendants.

21 **THE COURT:** Right.

22 **MS. MALTAS:** That is one thing we agree on in the
23 coordination order.

24 **THE COURT:** Right. So it would just be to the extent
25 there are other things that they are requesting that were not

1 already covered by what you all have done?

2 **MS. MALTAS:** Yes, Your Honor.

3 **THE COURT:** Okay. That's helpful, and it does change
4 what my assumption was based on the dates that you all had set
5 out in your Exhibit A. Essentially, you're going faster than
6 what you had anticipated?

7 **MS. MALTAS:** Yes, Your Honor.

8 **THE COURT:** Okay.

9 **MS. MALTAS:** We basically served them the second you
10 said we could.

11 **THE COURT:** Which is fine. It helps me, though, to
12 know, in terms of the schedule, there's not any issue now with
13 trying to coordinate search terms or anything like that? We're
14 now looking just forward from there?

15 **MS. MALTAS:** Yes, Your Honor.

16 **THE COURT:** Okay. Now, we had set this for a hearing
17 to address those things or to check in in October. If you all
18 are going faster, is there a need to maybe set that sooner than
19 October, or what's your thought on that?

20 **MS. MALTAS:** Well, my hope would be we don't have to
21 move to compel anything --

22 **THE COURT:** Right.

23 **MS. MALTAS:** -- that we can agree. I do think that
24 if we do file motions to compel and given their response date,
25 we may need to come in in August to argue.

1 **THE COURT:** Right. Okay. We can see -- so it's
2 possible we may need to set something sooner than August --
3 than October 24th, but we'll see if we need to do that.

4 **MS. MALTAS:** That's right, Your Honor.

5 **THE COURT:** Okay. All right. Now, there was no
6 discussion about December 6th and depositions before
7 December 6th.

8 Are you all taking depositions?

9 **MS. MALTAS:** So we don't know. I mean, I'll also say
10 as a data point we have served 95 percent of the third-party
11 subpoenas that we plan to serve. Obviously, we could learn
12 about new third parties during the course of discovery and
13 serve subpoenas, but we served quite a few, 30-some odd,
14 subpoenas, again, shortly after discovery opened in our case.

15 So we don't have a plan for when depositions could
16 be. There certainly could be a third party who gets their
17 documents in very quickly, and we decide that just for our own
18 ease of schedule we want to go ahead and take them early. It's
19 hard to tell. It really just depends on when we start to see
20 substantial productions from the third parties and, frankly,
21 from the Defendants, because a lot of the issues here do relate
22 to their agreements with the third parties, you know,
23 communications. Maybe we're going to need to see the other
24 side of the conversation and some internal Defendant issues and
25 documents in order to really plan for third parties.

1 So that's not a satisfactory answer. It's sort of a
2 TBD.

3 **THE COURT:** Right.

4 **MS. MALTAS:** We are not -- we have no internal
5 deadline when we're going to start depositions. We're going to
6 start them as soon as it makes practical sense for our case.

7 **THE COURT:** I think that's fair. I think we said all
8 along that you all can go ahead and move forward. But looking
9 at this coordination, it does sort of raise the question in
10 terms of whether there is at least some process that we could
11 go through if you're looking to take depositions, say, sooner
12 rather than later just so that we can determine, okay, how do
13 we coordinate in that situation so that the Plaintiffs -- the
14 MDL Plaintiffs have enough chance to get up to speed to decide
15 whether they want to participate in that.

16 And so it wouldn't be a matter of precluding you from
17 proceeding. I'm not -- I think that I'm still going to have
18 some question about taking a second deposition. And so if
19 that's the case, then I need to make sure that they are at a
20 point where they can choose whether to participate or not. And
21 it may just mean, okay, you don't take it before the October
22 24th hearing that's set. And then when we come in on October
23 24th, we can make some determination as to -- or hear from you
24 if there's folks that you want to go ahead and start on before
25 December 6th or not.

1 If we say, okay, you'll hold off until October and
2 then we'll take up that question, or would that create an issue
3 for you based on what you're planning?

4 **MS. MALTAS:** I do not think that sort of informally
5 holding off on taking depositions until October would be a
6 problem --

7 **THE COURT:** Okay.

8 **MS. MALTAS:** -- for what we're internally planning
9 just in terms of what we're going to have. I mean, I'm a
10 little hesitant to sort of be officially --

11 **THE COURT:** Right.

12 **MS. MALTAS:** -- precluded from doing that.

13 **THE COURT:** Right.

14 **MS. MALTAS:** I would like the opportunity to come
15 back --

16 **THE COURT:** Exactly.

17 **MS. MALTAS:** -- and say something.

18 **THE COURT:** Right.

19 **MS. MALTAS:** And we also -- you know, we do take
20 coordination seriously. We're happy to stay close with
21 everyone. We're not going to just notice a deposition in
22 September and just say -- with no warning or not tell anyone
23 what's coming if that's something that we decide to do.

24 **THE COURT:** Right. And I think that's what I would
25 anticipate is if there is some need to come back to ask for

1 something before October 24th, something arises that you
2 weren't anticipating or things change, I'm not intending to
3 preclude you from coming back to ask that. It would just be
4 for planning purposes today. To the extent there may be some
5 need to determine coordination for depositions after Plaintiffs
6 have had a chance to get up to speed, could we take that
7 question up when we come back on October 24th?

8 Just anticipate that -- at least for now, you're not
9 anticipating any depositions prior to the 24th?

10 **MS. MALTAS:** Yes. That makes sense to us.

11 **THE COURT:** Okay. I'm going to let you address all
12 of the things; but while we're just talking about it generally,
13 I think one of the things that I noticed that was a primary
14 issue that you all had raised was this idea of still getting
15 the discovery or maybe even participating in discovery after
16 the close of discovery.

17 And that may be one of those things where, you know,
18 it is what it is in terms of the way the local rules work,
19 because if you want the earlier close of discovery date, close
20 of discovery ordinarily means you don't get anything else and
21 you're done, and, you know, you proceed with that.

22 Now, I don't think it would necessarily preclude you
23 from getting copies of what may still be happening, but I don't
24 think you could still be participating in depositions or
25 otherwise doing any discovery -- conducting any discovery after

1 your close of discovery date.

2 **MS. MALTAS:** Okay. So I think -- I mean, I think
3 Your Honor sort of hit the nail on the head generally with your
4 discussions with everyone else. Our main concern is being
5 precluded from accessing information and from being able to
6 admit information that's otherwise admissible under the Federal
7 Rules of Evidence and Civil Procedure with regard to
8 depositions.

9 So we're really not trying to expand our discovery.
10 We're really trying to just have what we would ordinarily be
11 able to have. And so I do think that with regard to the end of
12 the discovery period, we would ask, to the extent that the MDL
13 Plaintiffs and the Defendants are continuing to exchange
14 written discovery, continuing to produce documents, that those
15 would come to us.

16 So our discovery is closed in April; but if
17 Defendants make a large production of documents or if there is
18 a large production of third-party materials, our expectation
19 would be we could still access those.

20 Now, given our schedule, would we really be able to
21 get them into our summary judgment or our expert reports? I
22 don't know. But that we would have the opportunity to see
23 those and we would have the opportunity to use them as
24 admissible under the rules at trial.

25 I think that's slightly separate than attending

1 depositions.

2 **THE COURT:** Right.

3 **MS. MALTAS:** But I think just the first step is
4 physical paper -- transcripts, rogs, RFAs, documents -- we
5 would ask that we continue to receive those throughout the
6 course of these cases.

7 **THE COURT:** And it may actually be something that we
8 have to take up at the end. I think -- I can tell you pretty
9 clearly that you wouldn't be able to keep attending
10 depositions.

11 **MS. MALTAS:** Okay.

12 **THE COURT:** I think that once discovery is closed,
13 it's closed. Now, we may be able to get everybody on the same
14 schedule so that that's not an issue, but I think you're done
15 once you've closed your discovery period.

16 Now, if you need to revisit that today, I mean, I
17 think we're still at the now is the chance to set the schedule
18 if we need to revisit or address it, because once everybody is
19 underway, then we're not going to change any schedule. If that
20 affects what they agree or what we set in that case affects
21 what you all want to do, then let's consider all of that today.

22 I would say what you continue to get after the close
23 of discovery, I mean, there may be some issue of, you know, is
24 this still supplementation, supplementing prior requests that
25 should still continue, or is it otherwise available in a way

1 that you can access it and still be able to use it? And it may
2 be that we have to kind of take that up more on a case-by-case
3 or look at it where we stand at the close of discovery.

4 So if you're counting on getting that information,
5 then it may be something we need to address now in terms of the
6 schedule or getting everybody on the same schedule. If
7 you're -- if you're comfortable with we'll close discovery so
8 we can get on with our dates and whatever happens with them
9 continuing happens with them, then we can do it that way.

10 But just in terms of the decision you all may need to
11 make, that -- I can't tell you right now that you would still
12 get access to all of that or that I would have them still
13 producing to you; but if it's available otherwise, then it's
14 one of those things that you could use it the same way you
15 could under the Rules of Civil Procedure for something else
16 that you would otherwise have access to.

17 So I'm not going to preclude how you would use it,
18 but whether you would still get the -- privy to additional
19 productions or copies of things that you otherwise wouldn't if
20 you're not participating in the discovery, then I think we have
21 to address that --

22 **MS. MALTAS:** Okay.

23 **THE COURT:** -- separately or later.

24 **MS. MALTAS:** And so that would just be sort of from a
25 going-forward basis at the April 22nd -- whatever our deadline

1 is, there is a possibility that we would not have access to
2 discovery documents, deposition transcripts that are produced
3 past that point?

4 **THE COURT:** Past that point. Right. Right. Right.

5 I think, ordinarily, you would not, and so we would
6 need to take that up or consider that.

7 **MS. MALTAS:** Right.

8 **THE COURT:** I'm not -- as I said, I'm not going to
9 preclude you or -- preclude you from using something that you
10 do have access to --

11 **MS. MALTAS:** Right.

12 **THE COURT:** -- or that you get, but whether you
13 should still keep getting productions after your close of
14 discovery deadline, ordinarily, you would not. You know,
15 whether we have to look and see whether that's a supplement
16 that would fall within 26(e) and should still be provided after
17 the close of discovery, we can look at that and see.

18 But that would be the analysis that I would be
19 looking at when we get to that point.

20 **MS. MALTAS:** And I think, as part of that analysis,
21 what we would just ask is sort of the goose-gander rule. So
22 Defendants are in, you know -- they don't consider it to be an
23 enviable position to be in two lawsuits, but they do have a big
24 leg up on us because they have access to everything, and they
25 can see it.

1 So what we would ask is, you know, if Your Honor is
2 inclined to say that written discovery, and particularly maybe
3 third-party documents are going to be the main ones we care
4 about, are produced past our close of discovery, they can't use
5 it either. So they can't come in at trial with third-party
6 productions from the MDL case and use them against us but we've
7 never seen them before.

8 **THE COURT:** So the proposal they have -- I guess
9 Defendants have includes all other witnesses June 13th. And I
10 know your expert reports start June 6th. But, you know, you're
11 still within the discovery period at that point.

12 It may be that you all can reach some sort of
13 agreement where everybody is stopping party discovery at the
14 April date, but everybody is still continuing on the
15 third-party discovery until some later date in June so that --
16 and, again, I'm not intending to preclude you from keeping on
17 whatever schedule you want to keep on; but if you want to
18 preserve that opportunity, then if you want to just keep some
19 of those internal deadlines that may keep everybody then on the
20 same schedule, that may be a way to do it and avoid all of that
21 issue that we're now talking about --

22 **MS. MALTAS:** Okay.

23 **THE COURT:** -- as well.

24 **MS. MALTAS:** Yes, that makes sense, Your Honor.

25 **THE COURT:** Okay.

1 **MS. MALTAS:** And I do think from our perspective --
2 and I think Your Honor has made the decision that it sounds
3 like we would be very happy with -- we just don't want to be
4 precluded from using things that we are ordinarily -- you know,
5 there's actually three cases. Arkansas is the third case.

6 **THE COURT:** Right.

7 **MS. MALTAS:** And so the coordination order, as
8 Defendants have written it, would put us in a worst position
9 here than we would be with Arkansas, because I can just serve
10 subpoenas all day to them and to the State of Arkansas and get
11 all of that stuff in their case and I can use it. Here,
12 they're saying, oh, it has to count as a rog.

13 **THE COURT:** Right.

14 **MS. MALTAS:** So that is sort of the primary issue for
15 us, which I think it sounds like it's going to be fairly
16 addressed. And we can think about the end-of-fact discovery
17 period and how we want to handle that.

18 **THE COURT:** Right.

19 **MS. MALTAS:** Maybe that's something we can talk about
20 more, again, just as long as it is that the Defendants can't
21 carry on in the MDL case gathering evidence that they can use
22 against us --

23 **THE COURT:** Right.

24 **MS. MALTAS:** -- but we've stopped.

25 **THE COURT:** Right. And I think that, as we're

1 talking through it now, my inclination would be for you all to
2 then come up with some consistent dates, because that seems
3 like a mess for us to try to sort out with really no benefit.
4 I mean, that's a lot of discovery dispute and coordinating
5 happening over discovery that's happening during that period of
6 time when really there doesn't need to be. We just set a date
7 that then lets everybody have equal access to that information.

8 **MS. MALTAS:** Right. And potentially hypothetical,
9 right, because --

10 **THE COURT:** Right.

11 **MS. MALTAS:** -- we don't know what discovery is
12 actually going to happen during --

13 **THE COURT:** Right.

14 **MS. MALTAS:** We could be all very concerned about
15 discovery that those --

16 **THE COURT:** Right.

17 **MS. MALTAS:** -- that is not new discovery --

18 **THE COURT:** Right.

19 **MS. MALTAS:** -- to that extent.

20 **THE COURT:** Right. Right.

21 So anything else that you wanted to address or raise
22 regarding the coordination or the schedule or anything else?

23 **MS. MALTAS:** I will turn it over to my colleague
24 Ms. Gillen, who I think just has a few points on some of the
25 smaller issues.

1 **THE COURT:** Okay. All right.

2 **MS. GILLEN:** Good morning, Your Honor. Elizabeth
3 Gillen of the FTC on behalf of the Government Plaintiffs.

4 I just want to offer a little more color on some of
5 the questions of hourly deposition limits that we've been
6 talking about.

7 **THE COURT:** Okay.

8 **MS. GILLEN:** So as Your Honor noted, Plaintiffs have
9 proposed that Defendant depositions be limited to 13 hours.
10 We've cited several examples of similar coordination orders of
11 other government antitrust cases with the related MDL
12 proceeding. These have all allowed for Plaintiff depositions
13 of 11 to 13 -- something in the 11- to 13-hour range.

14 You know, I just want to note that, absent
15 coordination, the MDL Plaintiffs said the Government Plaintiffs
16 would each be entitled to seven separate hours on the record.
17 So we do believe that we're giving up an hour of deposition
18 time we would otherwise be entitled to.

19 I also want to note that we do have 12 State
20 co-Plaintiffs who will also be, you know, participating in
21 these depositions. It may be that for some Defendant
22 witnesses, States have specific questions that they want to ask
23 about their state-specific claims and statutes.

24 So we think that our proposal is reasonable.

25 **THE COURT:** And I mentioned 11. I will give you my

1 thought process on that.

2 So if seven hours ordinarily, and an hour of it would
3 be for the Defendants to have for their own witness just
4 ordinarily, so just as a general ballpark, you would have about
5 six hours that you're ordinarily questioning.

6 My thought was if you give up an hour of that, then
7 you get five. The other Plaintiffs get five. Everybody is
8 giving up essentially an hour of what they would get, and I
9 give the Defendants their hour back, and that's how I get to
10 11. So if everybody is essentially giving up an hour of what
11 they would get, then I think it recognizes that there is some
12 overlap in terms of what the questions might be and helps to
13 then make it more feasible to do these in a day and a half.
14 Or, as I said, you know, if you've got a witness who is willing
15 and you want to try -- and Defendants want to give up an hour
16 and you want to try to do a 10-hour deposition in a day, then,
17 you know, that's certainly something I'm not going to preclude.

18 But, otherwise, ordinarily, it would be an hour and a
19 half -- I mean, a day and a half, and then you could fit
20 another day and a half in there together to try and get these
21 done in a shorter period of time.

22 That was my thought process going in for how to
23 balance those things.

24 Again, I want to hear and make sure I'm not missing
25 something in terms of how we come at that.

1 **MS. GILLEN:** No, thank you, Your Honor. That sounds
2 reasonable. I think, you know, Plaintiffs are just concerned
3 if we -- we don't want to give, you know, up too much of our
4 deposition time simply because Defendants are in two separate
5 litigations. We're certainly willing to work with all parties
6 to work out something to that extent.

7 **THE COURT:** Okay. All right.

8 Anything else on that matter or another issue that
9 you wanted to raise?

10 **MS. GILLEN:** That's all I have on that. I would like
11 to also talk about nonparty depositions as well.

12 **THE COURT:** Okay.

13 **MS. GILLEN:** Plaintiffs have proposed that if the
14 deposition of a nonparty is noticed by multiple parties that no
15 party would oppose an extension of time up to 14 hours. I
16 believe Defendants have suggested that nonparty depositions
17 should be limited to nine hours.

18 First, you know, practically speaking, I just want to
19 clarify that, you know, we're not suggesting that we spend 14
20 hours on the record with all nonparties. It was simply an
21 upper limit that we proposed.

22 I think, you know, we include the language no party
23 would oppose a request to extend fact deposition up to 14
24 hours. But, practically speaking, this is something that we'll
25 negotiate with the third party themselves.

1 **THE COURT:** I was going to say I am going to expect
2 or anticipate I am going to get some motions to quash by some
3 third parties if I include something like that.

4 **MS. GILLEN:** Correct. I mean, for each individual
5 third party, this will be a very fact-specific determination
6 based on a number of circumstances. Just to offer one example,
7 there could be some key third parties, for example, the
8 distributors, where the deposition is noticed by the MDL
9 Plaintiffs, the Government Plaintiffs, Corteva and Syngenta.
10 In that case, there would be sort of a four-way split of the
11 time.

12 **THE COURT:** Uh-huh.

13 **MS. GILLEN:** And, there, I don't believe nine hours
14 would be sufficient. But, you know, there may be other third
15 parties where that's not the case.

16 So just to be clear, we're suggesting sort of an
17 upper limit here to be negotiated on a case-specific basis.

18 **THE COURT:** Okay. So if we had, say, same kind of
19 range, 11, maybe 12 just so it's a little more easily
20 divisible, but if for consistency I kept them 11, then
21 essentially you split them in half between Plaintiffs and
22 Defendants and then make some coordination among yourselves
23 about how you wanted to use that time so everyone still has,
24 you know, five and a half hours in terms of -- per side, and
25 then you make some determination in terms of how best to use

1 that time.

2 Is that workable at least, unless you come back and
3 ask for more for a particular situation?

4 **MS. GILLEN:** I think that's workable. Hopefully, we
5 won't be back before Your Honor requesting that, but --

6 **THE COURT:** Right.

7 **MS. GILLEN:** -- I think as long as there's the
8 freedom and flexibility to sort of decide on an individual
9 nonparty basis, that's sort of the goal for us.

10 **THE COURT:** I think the idea would be we'll just keep
11 it consistent across the board for everybody. The third party
12 still has the ability to come back and request the limitation
13 to seven hours, and I can consider that. And the parties also
14 have the ability to come back and request something more than
15 11 if they can't -- if it's noticed by both sides or by more
16 than two parties.

17 And then let me think about how -- it would need to
18 be noticed by both sides and at least three parties but in a
19 way that then says, okay, this is going to be one that needs to
20 be divided more than just among one side. If that's the case,
21 you can come back and -- let me know if you really have a
22 reason you think 11 is not going to do it.

23 And I think the order should preserve in there so
24 it's clear to the third party and their attorney that they have
25 the ability to come back and ask for a limit of seven hours if

1 it can otherwise be agreed with counsel.

2 Does that address those things at least reasonably
3 enough?

4 **MS. GILLEN:** Yes. Thank you, Your Honor.

5 **THE COURT:** All right.

6 **MS. GILLEN:** I believe Your Honor touched on this
7 earlier, too, but we already -- we've addressed the posture
8 where if one side, either Plaintiffs or Defendants, notice a
9 nonparty deposition and the other side chooses not to
10 cross-notice, that they would still get an hour of deposition
11 time.

12 I believe everyone -- it seems like everyone is in
13 agreement on that point.

14 **THE COURT:** And just to -- right. So just to clarify
15 again, so if Defendants notice it, then Plaintiffs can attend
16 and have an hour. If they want to actually be able to have
17 more than an hour, then they would need to cross-notice it. If
18 you don't cross-notice on the same side -- so if Plaintiffs --
19 MDL Plaintiffs notice it and the FTC Plaintiffs don't
20 cross-notice it, then the FTC Plaintiffs don't get to attend.
21 To attend for one on your side, you have to cross-notice it,
22 but not for one on the other side. If it's not on the other
23 side, you can attend, but you only get an hour divided among
24 your side, Plaintiffs. So if you and the MDL Plaintiffs don't
25 agree, you get 30 minutes, essentially, for the ones that

1 Defendants notice.

2 Is that your understanding?

3 **MS. GILLEN:** Yes, thank you, Your Honor.

4 **THE COURT:** Okay.

5 **MS. GILLEN:** And I believe the only remaining issue
6 is the dispute with respect to deposition scheduling. I think
7 the process that Your Honor explained sounds reasonable. I
8 believe you suggested a week for proposing alternative
9 deposition dates. That's fine for the Government Plaintiffs.

10 I think, you know, we're just looking for a process
11 that will make this efficient and avoid delay in scheduling
12 depositions.

13 **THE COURT:** Right. I think, as I said, maybe let's
14 make it expectation as opposed to mandatory so that I give you
15 all the flexibility that I think you've shown you can use, but
16 we'll make the expectation that you're providing alternative
17 dates, and that would be more than just one alternative date.
18 I think it would be helpful -- if you can't do the date that
19 they are giving you, then propose at least two others so that
20 they can choose from on that.

21 Okay. I think we're good on that.

22 Anything else that you wanted to ask?

23 **MS. GILLEN:** Nothing else. Thank you, Your Honor.

24 **THE COURT:** Okay. So let me come back around to the
25 Plaintiffs. We've covered a lot of ground.

1 Ms. MacLean, I'll let you just respond to anything
2 that's been raised or raise anything else that we might need to
3 consider or address.

4 **MS. MACLEAN:** Sure. Thank you, Your Honor.

5 Just on the schedule, just to emphasize, again, we
6 are a bigger and more complex action than the Government
7 action, and it's not just a matter of the timing of our receipt
8 of documents from the Government action but also to review
9 those millions of pages of documents that we haven't even
10 started to review and to understand them and then to be able to
11 issue our own nonduplicative requests for the additional
12 materials that are specific to our case and then to be able to
13 review and analyze those. And then it's -- we simply -- we
14 believe it cannot happen on the same schedule as the
15 Government.

16 We started out proposing six months to the Defendants
17 and worked our way back to three, but we really think that's as
18 far back as we can possibly go and meet our obligations in
19 prosecuting the case.

20 As far as noticing Defendant depositions, those are
21 really in a lot of ways the heart of your case. That's some of
22 the most important depositions that there are.

23 **THE COURT:** So maybe it helps to sort of think
24 through, because, as I was looking at the schedule, I will tell
25 you this: I noticed, you know, there was a lot of time --

1 extended time baked in there for responding to requests for
2 production in terms of proposing custodians and proposing
3 search terms in the FTC case that we could do on a more
4 expedited basis if we needed to in order to get you all of the
5 production of documents by January so that we could be on a
6 similar type of schedule.

7 Now, whether we extend all other witnesses out some
8 or give you some, you know, extended time there, that may be
9 something that the FTC is interested in as well, so along the
10 lines of what the Defendants proposed, so that you have until
11 June for some of the other witnesses.

12 But I'm wondering, if we compress some of the time
13 for getting the search terms coordinated and issues on that
14 resolved, whether there wouldn't be a way to still get you all
15 the documents by January 22nd.

16 **MS. MACLEAN:** I understand what you're saying, Your
17 Honor. So just to reiterate, again, the FTC has been at this
18 for years and just has an understanding of the documents, an
19 understanding of the story that we don't have that we're --
20 even if we receive all of the documents on that timeline, it's
21 a matter not just of our receiving them, but meaningfully
22 analyzing them.

23 **THE COURT:** True, although at this point we're
24 talking about eight, nine months to just have the documents
25 before even having to start doing any of the depositions, if

1 we're talking about depositions, you know, starting after you
2 have the documents, say, in January.

3 Mr. Burke, did you need to address that?

4 **MR. BURKE:** If I could, sure.

5 So I tried to sketch out just how long it would take
6 to get our arms around the production in the FTC case.

7 **THE COURT:** Uh-huh.

8 **MR. BURKE:** So about a million pages in the preceding
9 investigation. I spoke with FTC. They expect about another
10 million from this tranche.

11 In a similar case, it took us with 35 to 40 reviewers
12 working full-time two years to get through 6 million documents.
13 So that's a third of that.

14 Let's suppose we can work faster, you know, working
15 faster than in that case, that's going to be five months. So
16 that takes up to about November to get our arms around what's
17 been produced in FTC.

18 We're also going to be at the same time trying to
19 figure out what is it that we need in our case. We have
20 additional active ingredients we have to prosecute. We have to
21 think about, okay, additional information we're going to need
22 to demonstrate impact on a common basis, come up with a common
23 damages formula. Our pleadings aren't even set. We may be
24 bringing in additional parties as defendants.

25 There's a lot of things that go into what our

1 requests for production are going to look like. And to think
2 that we're going to get -- if everything goes right, everything
3 falls into place and we get the production from the Defendants
4 by January, February, next year is, I think, optimistic.

5 **THE COURT:** Well, so you'll get the first million in
6 the next week or two. And so you'll have at least seven, eight
7 months for that, if we're talking about January 22nd as the
8 date. And so then if you get the other requests for production
9 that it looks like they're going to continue providing, and I
10 guess that's all the way up to January 22nd, but hopefully
11 before then, then you'll have them on the same time frame that
12 the FTC folks have them; right?

13 **MR. BURKE:** And then we're going to need to get our
14 own RFPs out.

15 **THE COURT:** So that would be -- I guess the question
16 of -- if you've got requests for production yourself, which,
17 again, are in addition to whatever the search terms are that
18 they are already running for the FTC and providing by
19 January 22nd, and your notion was that you could get those by
20 November 15th, then what I am looking at is, okay, well, what
21 if we do a quick turnaround then on addressing those and we
22 come back for a hearing, whichever those Fridays is not the
23 Friday after Thanksgiving, either the 22nd or the 29th, to work
24 out the search terms, any issues with those requests for
25 production, so that then they now have the same amount of time

1 or a similar time frame to go ahead and make your production by
2 January 22nd as well?

3 Essentially, it gets you on the same time frame that
4 the FTC has got.

5 **MR. BURKE:** So they make the production. Then we're
6 going to need to review these documents, obviously, before we
7 start taking depositions.

8 **THE COURT:** Right.

9 **MR. BURKE:** That's assuming nothing goes wrong and
10 there are no additional parties brought into our cases.

11 **THE COURT:** But isn't that the same position that the
12 FTC is in as well? I mean, you're getting most of those
13 documents or all of those documents on January 22nd.

14 **MR. BURKE:** One of the big differences is the FTC has
15 been at this for a couple of years, and they already know
16 what's in a lot of these documents, and they have a sense of
17 where they want to go.

18 Sure, we have a sense of where we want to go, but not
19 nearly so well informed as the FTC. And I don't think it's
20 practical to put us on the same track as FTC. I don't think
21 it's fair to our clients, not in a class case. Our case is
22 just that much more complex, and it's also broader.

23 **THE COURT:** What -- just so you know sort of where
24 I'm headed, I think that in terms of coordination of discovery,
25 I am assuming the FTC is not going to depose or notice anybody

1 for deposition until after we meet again on October 24th. At
2 that point you'll have had the chance to look at those things
3 and have them, what -- June, July, August, September,
4 October -- for several months, at least, to have some
5 opportunity to have reviewed all of those.

6 And then at that point if they start noticing
7 depositions, if you need to do a second notice, we're going to
8 be under that good cause. So there may be some second notice
9 that you need to do because it involves issues that are
10 different, the different composition or the class issues or the
11 other issues that you raised and noticed, which may be good
12 cause to include those people or have those people come back
13 for another deposition, but that you can go ahead and proceed
14 with the things that are covered by the FTC investigation and
15 the documents that you've already gotten so that we at least
16 have the benefit of the coordination for purposes of the
17 depositions.

18 I'm not going to do sort of the -- micromanage the
19 interrogatories and the requests for admission. I think those
20 are handled under the rules well enough, but I am very
21 interested in not duplicating depositions and in trying to get
22 the document productions up to speed.

23 Now, you know, it's going to be Defendants' burden to
24 get that all turned around that fast, but their interest in
25 doing that is so that they have less risk that there might be a

1 duplicate deposition that they have to deal with. And so if
2 the burden is on them to go ahead and get all that discovery on
3 a really fast turnaround, then we can do that so that then the
4 piece that's on you is to do whatever you need to do first in
5 order to be able to make decisions about those depositions as
6 they're coming.

7 Now, how we best do that with the time frame and
8 whether there is an interest in staggering it -- as I mentioned
9 to the FTC folks, you know, it may be in their interest to
10 stagger theirs to the later date for third-party depositions so
11 that you've got a little bit longer period of time to get all
12 of those depositions scheduled and you're prioritizing the
13 party depositions, or you all agree, you know, to give yourself
14 some flexibility there to intend to do party depositions, but
15 give yourself some room, if you need to, to schedule it through
16 June for doing the additional depositions.

17 It gives everybody a little more room there, because
18 there are a lot of depositions. And so I think even the -- if
19 we were noticing them by June and closing them by July, it's
20 hard for me to imagine how you're getting all those depositions
21 fit into that time period. And so my assumption is it's going
22 to be happening through the period from January. And if it's
23 by April for most party depositions, unless they can't be
24 scheduled before then, and July for the third-party
25 depositions, and the FTC agrees to that, consistent with

1 whatever they do with their experts in order to be able to make
2 sure they've got access to everything, it seems like there may
3 be a way to do that that pushes the Defendants to get the
4 documents on a really fast turnaround and then give you a lot
5 of extra time you're looking for here but in a way that's --
6 anticipates that there's going to be some depositions to go
7 ahead and start getting scheduled in January and forward
8 because there's not going to be time if you don't do it that
9 way, really.

10 **MR. BURKE:** If -- the key here for us is when we get
11 the documents --

12 **THE COURT:** Okay.

13 **MR. BURKE:** -- in order to be able to take the
14 depositions.

15 **THE COURT:** Right.

16 **MR. BURKE:** And as Your Honor correctly noted, then
17 the burden is on Defendants. If you're going to set a mark for
18 them to meet and they don't meet that mark, well, then it's
19 only fair that we can kick out depositions because we wouldn't
20 have the materials we need to take them.

21 **THE COURT:** Right.

22 **MR. BURKE:** And if that's the regime we're going to
23 adopt, you know, we'll make our best efforts to meet those
24 dates.

25 I'm just -- having done this for a while, things

1 never proceed perfectly. There's always -- to use a
2 colloquialism, there is always screwups. There is always
3 mistakes, and people fight over stuff they shouldn't fight
4 about. That's just human nature.

5 And I have my doubts as to whether we're going to
6 have the documents that we need to take depositions -- sorry --
7 that we're going to have these documents in hand by January,
8 not in this type of case with everything that needs to happen
9 to fall into place. That's just being candid.

10 **THE COURT:** Right.

11 **MR. BURKE:** And as a matter of fairness, we'll put
12 the bodies on that we need to put the bodies on to get up to
13 speed. But we felt like the schedule we proposed was a modest
14 schedule in terms of what we have to do to get this case ready
15 to get certified and then get prepared for trial in terms of
16 discovery.

17 **THE COURT:** And I think that what I'm sort of
18 contemplating as we're talking through is using some of the
19 dates that you proposed. You said November 15th is when you'll
20 be ready to do requests for production. So we'll use your
21 November 15th date. But then we're going to put a, you know,
22 two-week turnaround on finalizing -- from your requests to the
23 point where we're finalizing term searches. And so that's a --
24 you know, requires -- is going to require everybody to have
25 some intense focus during that time frame to get to the point

1 where within those two weeks you've got the search terms and
2 then for them to get their production so that production is all
3 happening on a similar time frame for -- by the January 22nd
4 date so that then depositions can be scheduled together.

5 And if the issue is between the January 22nd
6 production date and April 22nd you can't get all the
7 depositions scheduled, I mean, I think that's going to be a
8 problem for everybody if we're trying to figure out, okay, when
9 do we provide the last date for noticing depositions and when
10 do we get them scheduled.

11 And that may be something that if I were to going to
12 tier yours to give you a little bit of extra time after the
13 party discovery, that the FTC folks are interested in doing
14 something similar, too. And so then you prioritize the
15 depositions for the parties and then have your later date for
16 finishing everything to give you a little more time and
17 flexibility in that.

18 It, I think, uses the dates that you had but maybe
19 imposes some tighter turnaround on getting the documents
20 produced so that the discovery -- or the depositions can be all
21 set by cross-notice, and we don't have the issue of the good
22 cause being, well, we didn't get the documents until later or
23 we're three months behind.

24 Now, if the good cause is a completely different
25 issue here -- these are class certification issues; these are a

1 whole different active ingredient issue -- then that can be
2 something that we address and consider.

3 Now, I'll tell you when we're talking about third
4 parties, I'm going to have to also consider the interests of
5 the third party and whether they are telling me now this has
6 become unduly burdensome or how we adjust and address that.

7 But those are all things we can take up on a
8 case-by-case. I'm going to assume that the third parties that
9 you can cover you'll go ahead and take care of by
10 cross-noticing so that you don't burden them unless it's
11 necessary to do that as well.

12 **MR. BURKE:** Yes, Your Honor.

13 **THE COURT:** So that's where I'm headed. And as I
14 said, what I'm anticipating doing is actually maybe taking a
15 break and letting you all have some more discussion while
16 everybody is here anyway to see if you all can agree on
17 something. If you can't, where the points of disagreement are.

18 And I can sort of run through again some of my
19 thoughts on this, but I think I have given you some idea so
20 that maybe we're at the point where you all can at least narrow
21 down what it is that you might need me to address.

22 But is there anything else before I go back through
23 and check in with everybody else?

24 **MR. BURKE:** No, Your Honor, thank you.

25 **THE COURT:** Okay. All right. Mr. Weiss, anything

1 else that you wanted to respond to?

2 **MR. WEISS:** Yes, thank you, Your Honor. Jesse Weiss
3 for Corteva.

4 I think what I understand is we'll have an
5 opportunity to come back after we've had a discussion with all
6 the parties?

7 **THE COURT:** Right.

8 **MR. WEISS:** So I don't think I need to go through all
9 the issues here. Maybe some of them will be resolved --

10 **THE COURT:** Right.

11 **MR. WEISS:** -- in those discussions.

12 I would just note, you know, on the issue of -- like
13 discovery started in the MDL case in April.

14 **THE COURT:** Uh-huh.

15 **MR. WEISS:** In a normal case you wouldn't have an
16 investigative file. I think we made this point before. You
17 wouldn't have an investigative file. You would issue RFPs and
18 then responses and objections and productions.

19 So it's not clear to us why a deadline to propound
20 requests for production would be set November 15th. In the
21 Arkansas action, they didn't have our investigative file. They
22 served RFPs. That process is underway.

23 So I guess we just want to mentally see if the
24 existence of the investigative file has, you know,
25 diametrically opposite ways or diametrically opposite

1 implications, so we can move promptly in our document
2 productions. But if we get document productions on our RFPs --
3 all the RFPs on November 15th, that's a different scenario.
4 There is no reason for that because we're in discovery now.
5 They can issue RFPs, and they can craft them in a way that
6 says -- you know, that ensures there is not redundancy between
7 what's already been requested or what they are already going to
8 get.

9 So I just make that point.

10 **THE COURT:** So the -- for these FTC requests that
11 you've gotten that you've worked out search terms, so tell me
12 timeline-wise where are those productions going to happen?
13 This January 22nd date, is that just your final date to get
14 these produced or what's your schedule here?

15 **MR. WEISS:** Yeah, January 22nd is the final date to
16 be produced. I don't know exactly when we'll be able to
17 produce the documents that will be responsive to the -- our
18 RFPs that we recently received, but it will be before
19 January 22nd. That's the cutoff. That's the deadline.

20 **THE COURT:** Right.

21 **MR. WEISS:** And I think we have an obligation to make
22 rolling productions, and we intend to do that.

23 **THE COURT:** And all of those rolling productions are
24 going to be provided to the MDL Plaintiffs as well?

25 **MR. WEISS:** Under a coordination --

1 **THE COURT:** Under a coordination order, right, where
2 we're sharing all the written discovery --

3 **MR. WEISS:** Yes, Your Honor.

4 **THE COURT:** -- and productions.

5 And as I'm thinking about -- you know, I'm using
6 October 24th as that date we set, what I may be inclined to
7 do -- and I'll come back around to you, Mr. Burke -- is give
8 you a month less than you asked for and then hear from
9 everybody on October 24th if there are disputes on that so that
10 we'll see where we are at that point, but that the requests for
11 production would be, say, October 15th. That's a -- yeah,
12 October 15th. And then if they give you requests for
13 production October 15th, then you all need to have figured out
14 your objections and your proposed search terms, negotiated with
15 them on search terms, and be ready to talk to me about search
16 terms at the hearing on October 24th so that if there are any
17 other searches that need to happen from them that haven't
18 already happened before then, we get that taken care of on the
19 24th so that your document productions can then be provided to
20 them by January 22nd as well.

21 Now, it does -- yeah, it's a tight time frame. I'm
22 going to put this back on the Defendants again to some extent,
23 because we could have had them with the copy of all the
24 investigative file a year ago and had this a little more spread
25 out. And so I'm aware of that for the MDL Plaintiffs' position

1 that some of the burden -- or the bulk of the burden on doing
2 this on this quick turnaround, getting the documents produced,
3 taking care of things, is and should be on Defendants because
4 of where we are with that. So, I mean, I think I got to take
5 that into account as well.

6 So it may be a relatively quick turnaround from
7 October, November, and getting all the documents produced that
8 they want to in January, but I think that is the only way that
9 then gets us to your requests, which is then to have everybody
10 on a similar track for noticing depositions as well.

11 I think that may be where the push comes for the
12 Defendants on that.

13 **MR. WEISS:** That's understood, Your Honor. And I
14 think, you know, there's a deadline that can be set for, you
15 know, having RFPs. The only thing I would note is that, you
16 know, it's May, and I guess I don't see any reason why they
17 can't issue -- you know, start issuing their discovery requests
18 on a faster time frame.

19 **THE COURT:** Well, I mean, certainly they could, but
20 I'm giving them time to also review. So there may be some that
21 come sooner rather than later, but the deadline for that is not
22 until October because I'm giving them those months to be able
23 to review the investigative file that they didn't have access
24 to before. If there is some issue on that, I think it is what
25 it is on that.

1 **MR. WEISS:** Understood, Your Honor. I think we're
2 just talking about the difference between supplementation and,
3 like, the bulk of what they are going to be requesting.

4 You know, we understand there may need to be some
5 supplementation up to the deadline. We would expect that
6 that's not the date on which they are going to propound all
7 their discovery requests. Again, we got the RFPs in the
8 Arkansas action weeks ago. They didn't have an investigative
9 file. In a normal case where there is no investigative file,
10 RFPs would be issued a lot sooner. Discovery commenced in
11 April. It's May.

12 **THE COURT:** I understand. I'm, again, trying to
13 balance the concerns that they have with the amount of
14 documents that they are going to get that they need to review
15 and look at. There may not be many requests for production
16 that are left that they need to ask for once they review all of
17 those things and all the things that the FTC provided. There
18 may be very little left that you haven't already produced or
19 that wouldn't resolve or address their requests.

20 But I think I'm going to consider shortening the time
21 that they have asked by a month to take them to October -- you
22 know, they were asking for November on that -- in order to get
23 us on a schedule that lets me resolve it when we come back for
24 the hearing on 24th but with a -- that is going to give you
25 then a turnaround from the 24th. These are the search terms.

1 Now you need to go run them and do the production and do them
2 by January 22nd.

3 I don't think that's an unreasonable request in order
4 to be able to do the coordination that you're wanting to do for
5 the documents and also it sounds like the witness depositions,
6 which was the primary concern, it sounds like.

7 So if -- that's, at least, tentatively the way to get
8 everybody on a similar schedule. It pushes the Plaintiffs to
9 review the file, make any determinations that they want in
10 terms of what discovery to request, but it gives them the
11 October 15th date, which is a month less that they wanted, but
12 lets us get that resolved at the hearing that's already set on
13 the 24th, and then gives the Plaintiffs another three months to
14 run the search terms and get the documents produced that
15 haven't already been produced in all of the other productions
16 that have already happened.

17 And so -- and then that gets everybody on the same
18 time frame, although I am going to ask everybody to take a look
19 at the number of depositions that they're looking at scheduling
20 and the time frame they've got, and that includes in the FTC
21 case as well, considering potentially a tiered or a phased
22 schedule that may put party depositions sooner, unless the
23 parties can't fit them in and agree to do them later, but gives
24 a later date for the third party. That doesn't necessarily
25 change any of the expert dates or certainly the closing date

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1 for the FTC, but that would get everybody on the same schedule
2 so that the FTC doesn't have the concern or the issue with
3 regard to discovery that might happen after the -- at the close
4 of fact discovery that was already set.

5 So I would like to keep everybody on the -- a
6 schedule that avoids unnecessary discovery disputes but doesn't
7 prolong or delay anything, particularly delaying the
8 dispositive motion briefing and trial that's already set for
9 the FTC folks.

10 And then what -- and, Mr. Weiss, was there anything
11 else you wanted to address? And then let me go around and make
12 sure there is not anything else before I kind of summarize or
13 run through.

14 **MR. WEISS:** Thank you, Your Honor.

15 There is one more issue --

16 **THE COURT:** Sure.

17 **MR. WEISS:** -- just in case there is guidance for
18 when we confer --

19 **THE COURT:** Sure.

20 **MR. WEISS:** -- on it that we didn't discuss, which is
21 in their proposal they had a requirement that expert reports
22 and materials and unredacted briefs would be served on the
23 other side, which, you know, to us, it kind of just traces the
24 same action. There is --

25 **THE COURT:** Right.

1 **MR. WEISS:** -- not coordination. I think we've
2 addressed that in our submission.

3 **THE COURT:** And I will tell you what I would be
4 inclined to do with that. I think that I would anticipate that
5 we're setting this back for another proceeding in June or July
6 and that we can address then what's happening.

7 My understanding is in the MDL case at that point we
8 would be looking at setting a schedule for class certification,
9 expert discovery, and ultimately summary judgment that would be
10 on a separate schedule different from the schedule that the FTC
11 folks have already set. And so I would not assume or presume
12 to make any determination about access to expert reports now.
13 I don't think there is any reason to.

14 At this point everybody -- when they do get an
15 expert -- or have an expert report, you can just treat it as
16 you would in an ordinary case. And then if we need to address
17 what expert reports could or should be shared, I think we are
18 going to be in a lot better position to make that analysis once
19 we're to the other side of discovery and actually know who
20 those experts are going to be and what we're even talking about
21 rather than just purely hypothetical on that.

22 Does that address the expert issue for where you are
23 now?

24 **MR. WEISS:** It does, Your Honor.

25 **THE COURT:** All right. Anything else, Mr. Weiss?

1 **MR. WEISS:** Not from me.

2 **THE COURT:** Mr. McClammy?

3 **MR. McCLAMMY:** Thank you, Your Honor.

4 For the record, Jim McClammy on behalf of the
5 Syngenta Defendants.

6 I think just briefly, Your Honor -- and I, for sure,
7 have heard Your Honor with respect to the schedule. I just
8 wanted to say I think from the Defendants' perspective we stand
9 ready to engage with the Plaintiffs now on things like
10 custodians and search terms, to the extent that they may not be
11 completely just supplementary.

12 I think that we have trouble with the idea that they
13 may wait five months to serve us with RFPs, with requests for
14 production, and then leave us three months to produce the
15 documents when they'll have the benefit of the search terms and
16 custodians that underlie the investigation materials, and
17 they'll have the benefit of seeing the requests that the FTC
18 has recently done, the search terms and custodians that we're
19 proposing, and what we may ultimately work out.

20 I think that is a huge leg up to say, okay -- I'm
21 sure they have already a sense of the documents that they would
22 like to have requested. In any case that I have been in with
23 counsel for the Plaintiffs, nearly day one of discovery, they
24 have served us with requests for production and started that
25 process without having to go through and review files. So I

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1 think they have a sense of at least the universe or the nature
2 of documents that they would want, and they will be informed by
3 the custodians and the search terms that we've already had so
4 that we can at least get this process started now.

5 **THE COURT:** So what I may say is this. It's not an
6 issue of you have a certain number of requests for production
7 or some issue like that. And so I understand that you're
8 working out with the FTC and making some arrangements and
9 agreement on that. It makes sense to me that you would share
10 that with the Plaintiffs to see if they have any preliminary
11 sort of requests or input. I'm not going to hold that against
12 them later if they then on October 15th come back and say,
13 okay, now we've had a chance to review everything. This is
14 what we want.

15 So it wouldn't preclude them for asking for something
16 later, but I would certainly hope that you're including them in
17 the discussion as to what search terms you're using. If there
18 is anything they know off the bat that they want to go ahead
19 and add and request, then they can do that, that this isn't a
20 situation where I'm expecting that they're going to wait until
21 the 15th in order to spring everything on you in order to make
22 it more difficult for you, but I'm also understanding that
23 they've got a lot to review. And so what they asked for at the
24 beginning may be different than what they did decide they need
25 or want to add on the 15th, and I'm not going to preclude them

1 from doing that just because it's at the 15th.

2 **MR. McCLAMMY:** Completely understood, Your Honor.

3 And I'm sure, based on prior experience, that if we have active
4 engagements starting now on things like this, I think we'll be
5 able to preclude having that kind of a springing of, you know,
6 completely substantive and broad kind of, like, discovery
7 requests on the 15th.

8 **THE COURT:** So I don't know if you all are regularly
9 meeting. I could have you come back here, but that seems like
10 maybe the least efficient way to do it for everyone to fly to
11 North Carolina every month. But if you all can give yourselves
12 a regular monthly Zoom meeting to talk about these things, I
13 think that that would be appropriate and helpful. And so I'm
14 going to include that it's my expectation that you all are
15 meeting regularly by Zoom or by telephone in order to stay
16 engaged on these issues throughout the process on a -- what I
17 would anticipate is a roughly monthly basis, that everyone is
18 getting ready to talk about those things, not just by email,
19 but actually engaging with each other.

20 Again, it seems like everyone is interested in
21 working together on those things, and I don't need to have you
22 fly back here for me to preside over that kind of discussion,
23 that you all can make progress on that and then come back to me
24 in October. But if you're hitting a snag, I can set you for my
25 monthly pretrial day any month along the way. And so I'll just

1 add you to the calendar if you all think that it would be
2 helpful to get folks here.

3 And while I certainly appreciate everybody being
4 here, you can also just send one or two if you need to just for
5 a check-in. And, you know, if other folks need to then have a
6 chance to still be heard further, we can work that out as well.

7 So I think that's something that I would appreciate
8 you all baking into your coordination order as well.

9 Let me finish coming around.

10 Yes, ma'am.

11 **MS. MALTAS:** Yes, Your Honor. So completely
12 understood on the coordination. I feel like in that
13 conversation there was a lot of "we"s, and I'm not exactly sure
14 who is in the "we"s. And I just do want to be clear and make
15 sure that I understand, Your Honor.

16 We do have meet-and-confers scheduled next week on
17 our search terms and the custodians. I'm not anticipating the
18 MDLs attending --

19 (Indiscernible cross-talking.)

20 **THE COURT:** Right.

21 **MS. MALTAS:** -- adding search terms. They get to do
22 their own.

23 **THE COURT:** Right.

24 **MS. MALTAS:** So I just wanted to clarify that so
25 there is not an issue when we come to you.

1 **THE COURT:** Right.

2 **MS. MALTAS:** We are negotiating our RFPs. And if
3 they would like to have conversations in order to advance their
4 discovery --

5 **THE COURT:** Right.

6 **MS. MALTAS:** -- in advance, then that's --

7 **THE COURT:** And I think that's what I would
8 anticipate would be you all are -- you, meaning the FTC and the
9 Defendants, are working out the search terms and coming to an
10 agreement on that. I am anticipating that they will be able to
11 share with the MDL Plaintiffs the search terms that they are
12 running for you and that the MDL Plaintiffs may add additional
13 terms. They are not going to change anything that you all have
14 agreed to. So all of those get run. But the MDL Plaintiffs
15 may want to go ahead and suggest additional terms. And I would
16 certainly encourage them to do that, to the extent that they do
17 have any that they want to go ahead -- again, without
18 precluding them from serving whatever additional requests they
19 want to make along the way up until the 15th. And then we
20 can -- I can resolve all of their issues, to the extent there
21 are any, by the 15th.

22 So I think that's consistent with what your
23 understanding is as well.

24 **MS. MALTAS:** Thank you, Your Honor.

25 **THE COURT:** Okay. Anything else you wanted to add?

1 **MS. MALTAS:** Nothing else. Thank you.

2 **THE COURT:** All right. So I am -- I actually -- I
3 think there is one other case that was on for pretrial
4 conference. What I'm inclined to do is let you all stay in
5 this courtroom, and I'm going to go over to Courtroom 3 and
6 hear that case so we can be on the record there, and you all
7 can stay where you are here in this space and just use this
8 courtroom to talk to each other. And then I am going to come
9 back over here -- what time is it?

10 So I could also give you a lunch -- time for lunch
11 and ask you to meet and confer here either before or after
12 lunch, and then we'll come back, say, at 2:00. I know that
13 there may be issues with folks for travel, and I don't want to
14 interfere with that. So if it's better to do it shorter, I can
15 make it 1:00 and come back. But what I want to do is have you
16 all have some discussion while you are here so that if there
17 are other issues I need to resolve, I can do that while you're
18 here.

19 I think we've talked about the timing, what I'm
20 anticipating is the timeline that we talked about for providing
21 the file, which would be May 29th for Syngenta and Corteva's
22 information and June 5th for the third-party information; that
23 the Plaintiffs in the MDL case will then begin discovery and
24 can go ahead and start discussions regarding search terms and
25 requests for production, but that the deadline for propounding

1 requests for production would be October 15th. And then the
2 parties will engage in meet-and-confers to resolve those
3 requests and those search terms so that if there are any
4 disputes on that, they would be presented at the hearing on
5 October 24 with the expectation then that all of the document
6 production will be made by Defendants by January 22nd.

7 And then with regard to the deadline for noticing
8 fact depositions, the fact depositions would then be
9 proceeding, but that to the extent it may make sense to phase
10 or tier, that there would be Defendant witnesses sooner,
11 third-party Defendants later. And then it may be appropriate,
12 at least for the MDL case, to extend that out until July. And
13 if that's the case, the -- or June/July, and if that's the
14 case, then the FTC folks may want to also extend their fact
15 discovery to that same time frame so that everyone is
16 participating in fact discovery.

17 I am going to include mediation for the MDL, and so
18 that would be the close of fact discovery. I'm going to
19 include a mediation by the close of fact discovery. I know
20 everyone said they didn't think it would be productive, but
21 that's still part of the local rules that everybody
22 participates in a mediation. So I am going to include that as
23 well.

24 And you all would need to either agree on a mediator
25 or the Court will select -- the clerk's office will just select

1 the next mediator on the list. So if you all can agree on
2 someone who you think would be good or has some expertise in
3 these kind of cases, then that might be more useful to you so
4 you all can do a mediation.

5 And then we'll reconvene with regard to expert
6 reports. The FTC will stay on their schedule unless they want
7 to propose some intermediate changes to that schedule, but the
8 deadline for the FTC case will remain the same, the close of
9 expert discovery being October 2nd, and I'm not intending to
10 change that. And I will leave it up to you all whether you
11 want to make any other intermediate changes.

12 But the expert discovery in the MDL case we will take
13 up separately when we come back after the close of fact
14 discovery.

15 With respect to written discovery, I would assume I'm
16 operating under the proposal that everyone serves their own
17 written discovery. You provide copies, if requested, for
18 production in the other case, but they are just sort of treated
19 as documents from another case. So I would not intend to get
20 into a situation where we're cross-designating written
21 discovery or interrogatories.

22 But with respect to that, I would also anticipate
23 that then the Plaintiffs between the cases are not coordinating
24 with each other to expand their number of interrogatories that
25 way. And so there may need to be some assurance that there is

1 not some coordination of the interrogatories in a way that
2 doubles the number of interrogatories. And as long as each
3 side is just doing their own interrogatories, then we'll just
4 treat the interrogatories and the requests for admission
5 separately for each case.

6 On subpoenas, I will just ask, to the extent you can,
7 to try to work together to avoid burdens on third parties. So
8 I don't know if there is a way to do that. I'm not going to
9 include a specific order on that. But if I get a third party
10 who is coming here moving to quash because of the burden, then
11 I'm going to take into consideration the extent to which you
12 all have been able to coordinate that or avoid burdening third
13 parties, to the extent possible.

14 We talked about depositions. I'm going to include
15 that individuals may not be deposed more than once other than
16 by agreement of the parties or an order showing good cause, but
17 that's also with the understanding that the FTC is not
18 intending to notice any depositions before October 24th. And
19 then we'll come back and address those on the 24th.

20 We've talked about this, and so I won't repeat all of
21 that, but, generally speaking, if the Defendants notice the
22 deposition, the Plaintiffs have an hour and can be there. If a
23 Plaintiff notices a deposition, they need to cross-notice it in
24 order to be there. And I'm using 11 hours as the presumption
25 if the deposition is cross-noticed with the understanding that

1 the opposing side will have an hour of that. And I think we've
2 talked about that. If there are questions about that or you
3 all have some different understanding of what I've covered,
4 then that's part of what I want to make sure we address. And
5 then, of course, there is good cause in order to be able to do
6 a second deposition, which that may be appropriate as to some
7 individuals.

8 And the FTC fact discovery is going to stop at the
9 close of fact discovery for them. So if they want to have the
10 assurance of being able to -- certainly to participate but also
11 to know that they'll have copies and can use copies of the
12 discovery after that, I think the way to do that is to set the
13 fact discovery deadline the same date as the MDL fact discovery
14 deadline. And you can do that even if your expert discovery is
15 ongoing. Those are all intermediate deadlines. And so you can
16 do expert reports while you still have your fact discovery
17 going as long as everyone is in agreement on that. So I am
18 just going to leave it to you to look at how you want to do
19 that or when you want to set your close of fact discovery
20 deadline.

21 **MS. MALTAS:** Thank you, Your Honor. I guess all we
22 would ask, as we're considering what we want to do, is that,
23 again, the rule would be that it's not just that the FTC can't
24 use anything --

25 (Indiscernible cross-talking.)

1 **THE COURT:** Right.

2 **MS. MALTAS:** -- also Defendants.

3 **THE COURT:** Right. I think that's true. It's
4 just -- discovery closes in that case the date the fact
5 discovery closes. And, again, my interest, though, is not
6 unnecessarily overmanaging the intermediate discovery
7 deadlines. And so if discovery is still happening and the
8 Defendants have it, then I think the way to make sure you have
9 it is to just set your fact discovery deadline whenever their
10 fact discovery deadline is, even if you don't change any of the
11 other deadlines in your case.

12 **MS. MALTAS:** Yes, Your Honor.

13 **THE COURT:** Okay. And then it looks like -- there
14 was also a local Rule 5.5 report that looks fine to me. My
15 understanding of that is the public redacted version is going
16 to be filed within three days of the sealed version being filed
17 in all cases. And that redacted version -- that public version
18 should include a footnote, the note that a motion to seal is
19 going to be filed at the conclusion of the briefing so that
20 we've got public notice that the -- that there is information
21 that's been filed under seal and that a motion to seal is going
22 to be filed so that then I'll wait and let you file the motion
23 in the briefing on that at the conclusion of the briefing of
24 the underlying dispute -- or motion.

25 I think that covers the issues that I saw, but what I

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1 would like to do is kind of take a break so I can review and
2 make sure I've hit everything that you all had raised and also
3 for you all to discuss those things to see if you can nail down
4 if there is agreement on what those dates are going to be and
5 if there are any issues while you're all here that you need me
6 to address.

7 I'm going to turn it over to each of you to tell me
8 whether you want to just take an hour or whether you want to go
9 ahead and take a lunch break and come back at 2:00, depending
10 on everybody's schedule, and then also to tell me if there is
11 anything else that you want me to address or that I have missed
12 before I give you that chance to speak to anybody.

13 So, Mr. Burke?

14 **MR. BURKE:** Sure. I would prefer to come back at
15 1:00 --

16 **THE COURT:** Okay.

17 **MR. BURKE:** -- to keep this moving.

18 **THE COURT:** Okay.

19 **MR. BURKE:** And try to get back to the West Coast.

20 **THE COURT:** I understand. Right. It gets harder the
21 later it gets. I understand.

22 **MR. BURKE:** The one -- my one request is that the
23 Court consider moving back the date that good cause needs to be
24 shown to a date after the Defendants' production to the MDL
25 Plaintiffs is due so that we're not put in a position of having

1 to choose whether to notice somebody without all the documents
2 that we think we need and take that person because we're not
3 sure we can satisfy good cause later on.

4 **THE COURT:** So all the way after January 22nd?

5 **MR. BURKE:** Yes.

6 **THE COURT:** Okay. So I think what I am going to do
7 is -- well, the original proposal was December 6th, which was
8 still several months before you would have had the documents.
9 So I think I'm not going to go the other direction on that, but
10 what I will say is this: I think on the 24th we can address if
11 the FTC is intending to start setting depositions or noticing
12 depositions and where we are in terms of that.

13 I'm hopeful that the Plaintiffs are going to be able
14 to get up to speed and have enough information by that point to
15 be able to make those decisions to know whether you want to
16 participate in those -- any depositions that the FTC may set
17 after that point or not. But I'll -- like I said, I'm not
18 going to go the other direction to set it out even later, but
19 I'm not going to make any decision about October 24th until
20 December 6th at this point. We'll wait and see when we get to
21 that hearing on the 24th.

22 **MR. BURKE:** Thank you, Your Honor.

23 **THE COURT:** All right. Ms. MacLean, anything that
24 you wanted to add for the Plaintiffs?

25 **MS. MACLEAN:** No, Your Honor.

1 **THE COURT:** Mr. Weiss?

2 **MR. WEISS:** Thank you, Your Honor. We're fully in
3 agreement that an hour should --

4 **THE COURT:** Okay. I can do that.

5 **MR. WEISS:** Thank you, Your Honor.

6 **THE COURT:** Mr. McClammy?

7 **MR. McCLAMMY:** Nothing from here.

8 **THE COURT:** All right. Ms. Maltas, anything else you
9 needed to address?

10 **MS. MALTAS:** 1:00 p.m. sounds great.

11 **THE COURT:** Okay. All right. So let's adjourn here
12 until 1:00. And then you are free to leave, if you want to, to
13 get something to eat, but I'm expecting you to use the time to
14 discuss among yourselves, and you can use this space to do it,
15 so that when we come back, we know if there is anything else
16 that needs to be resolved before everybody leaves today.

17 All right. Let's go ahead and adjourn until 1:30 --
18 excuse me -- 1:00.

19 (Proceedings recessed.)

20 (Proceedings resumed.)

21 **THE COURT:** All right. We are back on the record in
22 the FTC case, which is 22CV828, as well as the MDL, which is
23 23MD3062.

24 Just to confirm where we are, if there are any
25 remaining disagreements or any guidance that I can give to

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1 further address the 26(f) scheduling in the FTC -- excuse me --
2 in the MDL case as well as the coordination orders in both
3 cases.

4 And so let me start with you, Mr. Burke or
5 Ms. MacLean, in terms of where we are for Plaintiffs, is there
6 anything else that you all are still in disagreement about or
7 anything else that I would need to address today for the
8 Plaintiff?

9 **MS. MACLEAN:** Not really, Your Honor. We did reach
10 agreement on the 11-hour limit per deposition.

11 **THE COURT:** Okay. As far as the other issues, do you
12 need me to go ahead and issue a ruling? Do you have some
13 sufficient guidance for where we are now, or what's the
14 Plaintiff looking for for that?

15 **MS. MACLEAN:** As far as the schedule you mean, Your
16 Honor?

17 **THE COURT:** Yes.

18 **MR. BURKE:** I think it might assist the parties to
19 have maybe a draft order, because I think we know where we all
20 ended up, but that would, I believe, abbreviate the discussions
21 back and forth.

22 **THE COURT:** Okay. So that you all propose an order,
23 or you would like a Court -- order from the Court?

24 **MR. BURKE:** We were trying to keep our notes as best
25 we could. My guess is the Court knows where the Court ended up

1 better than we do.

2 **THE COURT:** That's fair. And I think what I am
3 looking for is if there are particular areas of disagreement on
4 that or areas where you're not sure, then those are the things
5 I can clarify further, but I can also just go through as I was
6 summing up at the end where I was.

7 **MR. BURKE:** That would be fine. Thank you, Your
8 Honor.

9 **THE COURT:** Okay. Do you have other particular areas
10 of disagreement that you wanted me to highlight or that you
11 noticed? And I'll go back through. I don't know if there is
12 something -- I can go through if it's easier for me to go to
13 Mr. Weiss next.

14 **MR. BURKE:** We were in the conference room together,
15 and the tenor was that we think we understand where the Court's
16 at. We all think we're fine with where the Court ended up. We
17 reached agreement on a lot of it.

18 **THE COURT:** Okay.

19 **MR. BURKE:** Maybe it makes sense to run through
20 things once more.

21 **THE COURT:** And then just make sure that everybody is
22 on the same page with everything?

23 **MR. BURKE:** Yes, Your Honor.

24 **THE COURT:** Okay. All right.

25 **MR. WEISS:** Jesse Weiss for Corteva, Your Honor.

1 We're in agreement on that being a sensible process.

2 **THE COURT:** All right. Very good.

3 **MR. WEISS:** Thank you, Your Honor.

4 **THE COURT:** All right. Mr. McClammy, I can run
5 through if that seems appropriate for you as well. If there is
6 anything else you want to highlight before I do that?

7 **MR. McCLAMMY:** Yes. I think we are in agreement with
8 that process, and that process sounds perfect.

9 I think in the discussion, which was productive, we
10 also discussed, in addition to the 11 hours, the idea that we,
11 both sides, Plaintiffs and Defendants, would be starting to
12 talk about, you know, things related to the requests for
13 productions and would be relevant to requests for productions
14 starting immediately so that we can work on getting that done
15 quickly and in a way that won't infringe on our ability to get
16 things done by January.

17 **THE COURT:** Okay. All right. I think that's very
18 helpful. That's good, and I'm glad that you're doing that.

19 For the FTC, particularly as to the coordination and
20 the dates you all have, is there anything that you wanted to
21 add or update me on that?

22 **MS. MALTAS:** Yes, Your Honor. So we discussed with
23 Defendants and we've agreed with Defendants that we would like
24 to table the issue of whether or not Defendants and the
25 Government Plaintiffs would be willing to extend the fact

1 discovery schedule.

2 **THE COURT:** Okay.

3 **MS. MALTAS:** And when we come back in October, we'll
4 let you know, because then that way we'll have some time to see
5 how discovery is playing out and if that's something where the
6 Government Plaintiffs and Defendants together would want to
7 have an extension in order to deal with the use of discovery in
8 the MDL case.

9 **THE COURT:** And then the piece that leaves, I guess,
10 less settled for me is if you're staying on a February 21
11 deadline for the close of discovery, then the proposal, at
12 least for Defendants, is February 21, 2025, for the close of
13 fact discovery as to the Defendants' witnesses and then all
14 other witnesses June 13, 2025, in that case.

15 Is that your understanding on that?

16 **MS. MALTAS:** So our close of fact discovery date is
17 April --

18 **THE COURT:** April 22. Right. I'm using the
19 designation date. April 22 and July 25th; right. July 25th
20 would be the date that their fact discovery closes.

21 **MS. MALTAS:** Sure.

22 **THE COURT:** Right. Right. Right.

23 **MS. MALTAS:** Ours will stay April 22nd, but we will
24 let you know in October, once discovery has started to come in,
25 where we're feeling about that.

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1 **THE COURT:** Okay. All right. And then I think
2 that's clarified. So for -- it would be April 22nd was the
3 deadline for witnesses -- for depositions of the Defendants'
4 witnesses. But in the MDL case, they would have an additional
5 period of time through July 25, 2025, to complete additional
6 discovery and that -- what I would intend to do is to the
7 extent that there may be good cause to include a Defendants'
8 witness after the April 22, 2025, date, then I can consider
9 that as well.

10 So we'll use the same sort of standard as we're using
11 for second depositions. So a second deposition of the same
12 person for good cause and a deposition of a Defendants' witness
13 after April 22, 2025, would also be allowed if there's good
14 cause.

15 Essentially, I am going to build in some flexibility
16 there for you all to use the period from April 22nd to
17 July 25th, but with the presumption that you're going to try to
18 get all of the defense witnesses deposed and coordinate the
19 depositions with the FTC depositions during the time period
20 prior to April 22nd. And I think I had not completely nailed
21 that down because I wasn't sure what the FTC was intending to
22 do or what that was going to look like, but that would be how I
23 would nail that down or confirm that.

24 So I can run through what my notes look like, and if
25 they are different than what you all understood or something

1 else that we need to address, then now is the time to do it.

2 So initial disclosures are going to be May 31st. And
3 this is the schedule for the MDL case that I'm starting with.

4 The track is exceptional. The deadline for an ESI
5 agreement and a protective order -- I believe I already have
6 the ESI agreement that's been submitted. The deadline for
7 submitting the protective order will be tomorrow, May 24th.

8 And in addition to the initial disclosures, the
9 deadline is May 29th for Syngenta and Corteva to provide their
10 documents from the FTC investigation. And the deadline is
11 June 5th for Syngenta and Corteva to provide the third-party
12 documents from the FTC investigation, unless there are
13 objections. And for those, they should notify the Plaintiffs
14 so that the Court can resolve those objections as necessary.

15 With regard to the deadline to propound requests for
16 production, I would anticipate that the Plaintiffs are
17 proceeding with discovery, including requests for production
18 and, to the extent possible, weighing in on search terms and
19 custodians early as a preliminary matter, but that's without
20 prejudice to them ultimately completing requests for production
21 by October 15th.

22 And then between October 15th and October 22nd, say,
23 that the parties will address any objections to the requests
24 for productions, propose custodians and search terms, and meet
25 and confer to discuss and resolve any disputes regarding

1 custodians and search terms so that they can file a joint
2 report by the end of the day on the 22nd letting me know what
3 disputes, if any, remain. And those will be heard at the
4 hearing that's already set for October 24th.

5 That is obviously a very short turnaround for
6 resolving all of those disputes and issues, but that's where
7 we're going to borrow a lot of time. So we'll just do an
8 intense meet-and-confer process to get all of those issues
9 resolved. And then if there are any disputes, we'll take care
10 of those on October 24th.

11 With regards to depositions, there is -- I'm not
12 going to include a switching the burden as of a particular
13 date, but at this point the FTC is not intending to depose any
14 individuals, whether parties or nonparties, prior to the
15 hearing on October 24th. So we can address that issue further
16 as may be appropriate on the 24th, but I'm going to adopt the
17 general provision that a deposition may not be taken of the
18 same person twice in the two cases unless there's good cause
19 shown. And, again, if we need to address that further
20 regarding the timing of that, we can do that when we come on
21 the 24th.

22 As far as interrogatories and requests for admission,
23 each side has 30. So the Plaintiffs may serve 30 to the
24 Defendants collectively, and the Defendants may each serve 30
25 to the Plaintiffs collectively. And that would -- and I

1 believe that's my understanding of how you all had proposed
2 that.

3 Is that -- or was that to each? Mr. Burke?

4 **MR. BURKE:** It was collectively, Your Honor.

5 **THE COURT:** It is collectively. Okay. I am just
6 making sure I'm not inadvertently changing what you all had
7 proposed.

8 And that's fine as far as the numbers there.

9 The deadline then for the parties to substantially
10 complete production of data and documents in response to all
11 requests for production of documents would be January 22, 2025.

12 The -- yes. Okay.

13 **MR. BURKE:** It's 30 on Syngenta and 30 on Corteva.

14 **THE COURT:** Okay.

15 **MR. BURKE:** I was thinking the other way around in
16 terms of the Plaintiffs.

17 **THE COURT:** Okay.

18 **MR. BURKE:** Yes.

19 **THE COURT:** So it will be interrogatories and
20 requests for admission would be Plaintiffs collectively may
21 serve 30 on Syngenta and 30 on Corteva.

22 Is that Defendants' understanding? I'm trying to not
23 change anything at this point.

24 **MR. WEISS:** I believe that's correct, Your Honor.

25 **THE COURT:** All right. And then the Defendants may

1 each serve 30 to the Plaintiffs collectively.

2 And then, again, the deadline for the parties to
3 complete production of data and documents and respond to all
4 requests for production that were addressed by those deadlines
5 and specifically that were propounded by October 15th would be
6 January 22, 2025.

7 Again, that's, I understand, a short turnaround for
8 the Defendants, and the hope is that a lot of that can be taken
9 care of earlier in the process as the parties are getting
10 familiar with the information and have some initial indication
11 as to what they might be requesting. But to the extent that's
12 tight on the Defendants, that's a result of the Plaintiffs not
13 having that FTC investigation material earlier, and I will find
14 that's appropriate, particularly in light of the Defendants'
15 interest in having all of the depositions proceed together or
16 be coordinated to the extent possible.

17 So I understand it's a tight turnaround, but I am
18 still going to hold the Defendants to that January 22nd date in
19 this case as well as the FTC case.

20 I have a deadline for privilege logs from the FTC
21 case as February 21st. And so I would anticipate that that's
22 going to be the same since the documents are now being produced
23 by January 22nd; but if there is some particular issue with
24 regard to privilege logs, then we can address that.

25 The deadline to notice fact depositions for the

1 Defendants' witnesses, it will be February 21st, 2025. All
2 other witnesses, June 13, 2025. But if there is good cause for
3 noticing a Defendants' witness after February 21st and before
4 June 13th, then I'll consider that the same way I would a
5 second deposition so that we'll have a little flexibility in
6 there. And, of course, the parties can agree, if you want to
7 agree, to a Defendants' witness between February 21st and
8 June 13th. Then certainly you could do that by agreement as
9 well. So my dates are not precluding you all from making an
10 agreement there.

11 You will note -- I'm sure your local counsel will let
12 you know. Otherwise, once we set deadlines, and particularly
13 the deadline for the close of discovery, then the parties can't
14 agree to do discovery after the close of discovery. So even if
15 you all agree, if it's close of discovery, you need to get a
16 court order to allow you to complete -- or continue discovery
17 after the deadline for the close of discovery.

18 Intermediate deadlines you all can address. So 30
19 days to respond to written discovery. You all can agree among
20 yourselves to extend that time as long as it doesn't extend you
21 past the deadline for the close of discovery. And, again, I'm
22 sure your local counsel will make sure you're aware of that;
23 but just so that I forecast that for you, no agreements to
24 extend discovery without a Court order, because the day we have
25 set for the close of discovery should be the date everything is

1 done, and the Court is going to operate off of that.

2 With regard to the close of fact discovery then, that
3 will be April 22nd still for the FTC case but July 25, 2025,
4 for the MDL case. And we'll leave open the question of whether
5 the FTC folks want the option of extending their fact discovery
6 period to also be able to participate in discovery through
7 July 25, 2025.

8 The mediation will need to be completed by close of
9 fact discovery. So that will be July 25, 2025.

10 Parties will need to meet and confer at the
11 conclusion of fact discovery and then file competing proposals
12 for schedule regarding expert discovery, summary judgment, and
13 class certification. So what I would anticipate is 30 days
14 after the close of fact discovery that you all will give me a
15 joint status report that would set out your plan either jointly
16 or individually. What I would prefer is a joint report, and
17 where there are disagreements, you let me know what the
18 disagreements are in terms of what you propose for experts, for
19 class certification, and for summary judgment.

20 I would expect that there may still be issues
21 regarding sharing expert discovery. I'm not going to make a
22 ruling on that now. So you wouldn't need to include that in
23 your order. My expectation is that ordinarily we're going to
24 treat these cases separately, but there may be some reasons why
25 there may be particular expert reports or information that

1 would be appropriate to share here. And so I'm going to wait
2 until I know what the actual expert reports are that we're
3 talking about or what the issues are that we might need to
4 consider. So I'm not going to make a determination regarding
5 expert reports sort of on a hypothetical. I don't think that's
6 going to be an issue until we actually get the expert discovery
7 in the FTC case, in any event.

8 And then we talked about -- as far as coordinating or
9 consolidating written discovery, each case is going to involve
10 serving its own written discovery. I'm doing that, though,
11 with the assumption and the understanding that the Plaintiffs
12 in the two cases are not coordinating their written discovery.
13 So each Plaintiff's group is serving its own written discovery
14 for interrogatories and requests for admission and so -- as
15 well as the production of documents.

16 We talked about documents that are produced in either
17 case can be shared. And you all can come up with numbering
18 conventions, if you want to do that, so that you don't have to
19 renumber things. In fact, I would ask that you not renumber
20 things. It's much easier, I think, for everybody to keep track
21 of numbering if there is a number for documents that's
22 consistent across. So, to the extent possible, if you all can
23 use the same Bates numbering or numbering conventions in a way
24 that lets us know it's a Defendant document, it's a MDL
25 Plaintiff document, or a FTC document, but something that we

1 can use consistently so we're not calling the same document two
2 or three different things, that would be helpful.

3 But documents produced could be and should be shared
4 across all the cases, and written discovery responses should be
5 shared across the cases but are not counted towards the other
6 Plaintiff's numbers, again, with the understanding and
7 assumption that there's not any coordinating on that, that each
8 Plaintiff's group is just doing its own written discovery
9 requests.

10 On subpoenas, I think that everybody agreed that the
11 requests to the subpoena recipient would be that they would
12 provide the documents to all of the parties in both cases.
13 And, certainly, you all can request that. Again, I would ask
14 everyone to work together to reduce the duplication burden on
15 subpoenas to third parties. I sort of have some concern that
16 there's lots of third-party discovery that's going to happen
17 there, and the third parties aren't here to request some
18 limitations or some accommodations on that, and so I'm going to
19 be tuned to their concerns of burden if they come back to me.

20 And so one of the ways that I can weigh that burden
21 is looking at how well you have done in trying to not duplicate
22 requests to the same third party or narrow those things to
23 avoid the burden and certainly to avoid the duplication. I'm
24 not going to give you a specific scenario of how you have to do
25 that. I think it may depend on who the third party is and what

1 the relationship is for each of the different groups here. I'm
2 just going to encourage you to do that to the extent you can.

3 And then as far as depositions, we talked about those
4 at length. The parties may not be deposed more than once --
5 individuals -- any deponent may not be deposed more than once
6 other than by agreement of the parties or an order showing good
7 cause. But to the extent there may still be issues in the
8 period between October 24th and December 6th, we can take that
9 up at the hearing on the 24th.

10 We talked about the Plaintiffs will have an hour in
11 any depositions noticed by the Defendant, and that would be 30
12 minutes each, unless otherwise agreed. Defendants will have an
13 hour in depositions noticed by either Plaintiff. And then if
14 Plaintiff notices and the other Plaintiff cross-notices, then
15 we had four hours to make it 11 hours total. We count that
16 towards the deposition limits for both, and one of those hours
17 is still for the Defendants. And so that would be 10 hours
18 that the Plaintiffs would either split equally at five each or
19 could choose to allocate by agreement otherwise.

20 With respect to that for third parties, I will still
21 entertain any requests by a third party to limit that further,
22 and so particularly down to seven hours. So if there is a
23 third party that's got a concern, I certainly would encourage
24 you to work cooperatively with that third party or their
25 attorney because I'm going to be sensitive to their requests or

1 concern if there's not a real reason or need to do more than
2 seven hours for a particular third party. But I will let you
3 work that out on an individual basis.

4 Same way, if there is a particular third party that
5 needs additional time for a particular reason, then I'll
6 certainly entertain a request. You all can either agree to
7 that with the third party and with each other, or you can come
8 back to the Court and request that if you need me to do that.

9 If the deposition is not cross-noticed, then the --
10 if it's noticed by a Plaintiff and not cross-noticed by the
11 other Plaintiff's group, then the non-noticing group can't
12 participate. So if you want to be there, you need to
13 cross-notice and have it counted for one of your depositions.
14 But if you're not there, it's treated like a deposition in
15 another case, and you can still get copies of that as part of
16 the discovery and then use it to the extent that would be
17 otherwise allowed by the Rules of Civil Procedure. So I'm not
18 going to make any particular rule excluding those or letting
19 you use them. We're going to treat that like you would any
20 other deposition from another case, and the ordinary rules
21 would apply.

22 We talked about for the FTC case the discovery stops
23 at the deadline for close of discovery, and so that would be
24 that April 22, 2025, date. And that would be -- for both
25 sides, that would be the deadline for the close of all fact

1 discovery in that case. And if there are particular issues on
2 that, we can address and consider them or the parties can
3 decide if they want to extend fact discovery until July 25th,
4 with or without changing their expert dates, in order to take
5 advantage of any discovery that might continue in the MDL case
6 during that time period.

7 With regard to the local Rule 5.5 report, that's
8 fine, and I'll adopt that. Again, the public redacted version
9 needs to be filed within three days so that there's something
10 showing on the docket, the public version, and the Court knows
11 that that's there and the public can see that, with the note
12 that the motion to seal will be filed at the conclusion of the
13 briefing, which should, in any event, be within 60 days so that
14 the public is aware and so that we get motions filed. And then
15 the motions to seal generally need to comply with local Rule
16 5.4(c) in terms of the support for filing documents under seal.

17 So that includes not just assertions in a brief, you
18 actually need an affidavit and supporting information as to why
19 the document should be sealed. And it needs to comply with the
20 Fourth Circuit's standards and give us what we need in order to
21 make the findings to be able to justify sealing the documents
22 under the standards the Fourth Circuit is going to apply. And
23 so I think that's an important part of making sure as much of
24 this is public as can be and any redactions are narrowly
25 tailored.

1 If something doesn't have to be filed, don't file it.
2 So if something has got confidentiality claims on it and you
3 can proceed without filing that document, just don't file it.
4 And then we don't have to make further findings and
5 determinations. Or if you can file the document with
6 redactions because the Court doesn't need the redacted parts,
7 just file it with redactions, and then that's the only copy.
8 It's redacted for everybody. And as long as you're not filing
9 anything with the Court that the public is not seeing, then we
10 don't have to address the issues that come up in a motion to
11 seal.

12 So I would just encourage you to narrow as much as
13 possible what you actually need to file with the Court when
14 it's -- particularly when it's something that's got
15 confidentiality claims on it so that we're not having to do a
16 motion-to-seal analysis, unless it's something that is
17 necessary or critical to be considered by the Court.

18 So those are the notes that I have. Are there other
19 things that I missed or issues that I didn't resolve or
20 questions that you have?

21 **MR. BURKE:** Your Honor, we proposed a number of
22 depositions for the parties and for third parties. Are you
23 adopting the proposals of the parties or --

24 **THE COURT:** Oh, you all were in agreement on that;
25 right?

1 **MR. BURKE:** Yes, Your Honor.

2 **THE COURT:** Yes. So I will adopt the agreement on
3 that, and I had that note here that I didn't mention. So that
4 would be 15 of Syngenta, 15 of Corteva, and 40 of the third
5 parties, although I had mentioned that I would consider a
6 request to reduce that if that was appropriate, given the way
7 we're doing the depositions.

8 I do know that there are some other issues that the
9 parties in the MDL will have that they will need to address,
10 and so I can hear from Defendants on that. But I would intend
11 to adopt the 15 of Corteva and 15 of Syngenta by the
12 Plaintiffs -- MDL Plaintiffs collectively and also the
13 provision that the Defendants can take two of each Plaintiff
14 and the same number of third parties as we set for the
15 Plaintiffs to take.

16 Mr. Weiss?

17 **MR. WEISS:** Thank you, Your Honor.

18 We -- at least I had understood, and perhaps I
19 misunderstood, from the earlier discussion that the Court had
20 in mind a reduced number if this other framework was going to
21 apply.

22 **THE COURT:** So I think, as I'm looking at my notes,
23 my assumption was it was going to be the same as the FTC case.
24 So it would be 15, 15, and 30. That would be 30 for you all as
25 well. So that's reducing your number of third-party

1 depositions down as well. I don't think I had finalized a
2 determination on that, but that's what I was initially heading
3 towards.

4 I can hear from you on that.

5 **MR. WEISS:** Understood, Your Honor. We're fine with
6 30 on the Defendants' side. We had understood -- or at least I
7 had understood that the principle of not having coordination
8 result in added discovery potentially would be resolved with a
9 lower number on the depositions.

10 Also, on the interrogatories, I understand the Court
11 put in -- has in mind 30. That was just my understanding.

12 **THE COURT:** Right. No --

13 (Indiscernible cross-talking.)

14 **MR. WEISS:** -- the mechanisms --

15 **THE COURT:** Right.

16 **MR. WEISS:** -- going back to an equitable kind of --

17 **THE COURT:** Well, and what -- I think that's the
18 number that is in FTC. It's the -- it does reflect some
19 reduction down to the extent the agreement might have been
20 based on a different understanding of how they would be shared.
21 And I would still, as I did in the FTC case, note that if we
22 get to the point where the Plaintiffs have taken their 30
23 depositions, and they've got another ten that they can tell me
24 why they need to take who they are, then I can do that in a
25 less hypothetical way and a more concrete way in terms of who

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1 it is and that there is an appropriate basis to include them as
2 well.

3 So that's usually how I would do that.

4 **MR. WEISS:** That approach makes sense to have that
5 kind of cap and if there is good cause to -- as is always the
6 case, if there is good cause to add more discovery, then that
7 can be brought before the Court.

8 **THE COURT:** All right.

9 **MR. WEISS:** On the --

10 **THE COURT:** Before we move to something else,
11 Mr. Burke, did you want to respond to that further?

12 **MR. BURKE:** Sure. I can get you up to 40 even 50
13 pretty quickly.

14 **THE COURT:** No, I'm sure you could.

15 **MR. BURKE:** It's because we have a different case
16 than FTC, and we have issues concerning antitrust standing on
17 the Clayton Act and the Sherman Act directly involving the big
18 seven distributors. So we're not just going to take one. We
19 plan on taking multiple depositions of each of those.

20 We also have antitrust state requirements in some of
21 the state antitrust statutes. So we will be taking
22 (indiscernible). Between our consumer protection and antitrust
23 state claims, we have 38 states implicated. Plus, we want to
24 take competitors. Plus, we want to take generics. So I'm way
25 past 30. And this is all necessary to build out our case.

1 This isn't (indiscernible). This is what we need to be able to
2 prove up our case and certify a federal case and certify state
3 law claims as well.

4 **THE COURT:** So what I am thinking about at this point
5 is I'm going to -- I think it makes sense to set it at 30 for
6 now, but for everybody to understand that I am likely to add at
7 least ten. That way you all can operate under the assumption
8 that if you come back and show me ten, not that are duplicative
9 of the issues that have already been addressed, but ten that
10 involve the issues that you need to address that are different
11 in the MDL case, I'm anticipating that you would probably need
12 those and that it will be -- it would be appropriate to add ten
13 on those issues.

14 It would just be helpful for me to do that. And we
15 can even do that when we come back in October. But it would be
16 helpful for me to do that once we've gotten a little further in
17 so we know how the coordination is going. I think it will
18 depend, too -- if you're using yours on cross-noticing
19 depositions, that's great. That's the whole point of this is
20 to cross-notice as much as possible. And then, in that
21 scenario, you would need another ten to address the issues that
22 weren't covered by the ones that were addressed by the FTC.

23 And so I'm going to set it at 30 to start with,
24 because I did that in the FTC case, and that's already a
25 substantial and really significant increase in what the

1 ordinary number of depositions would be. But I understand the
2 basis for that. And I'll just go ahead and forecast now that I
3 would anticipate adding another ten that are unique to the MDL
4 issues, but I would like to do that as a separate determination
5 when it's not quite so hypothetical and when we have a little
6 bit more understanding.

7 And I'll put it this way, too. You all can always
8 agree to go ahead and do that. And so I'm giving you that
9 forecast of what's likely to happen so that when you all are
10 having these discussions and negotiations, if you can narrow it
11 down to these ten are the ten that we need that are different
12 issues, then it's likely reasonable that the Defendants could
13 agree to that without having to come back to me. But if you
14 need to, then I am giving you some forecast of what I would
15 intend to do or what is likely.

16 But we're going to control it a little bit more so
17 it's either by agreement or coming back to me so that we know
18 that these are the ten that can address those additional issues
19 that are relevant to the MDL case separate from what's already
20 being addressed in the FTC-related issues.

21 **MR. BURKE:** Thank you, Your Honor.

22 **MR. WEISS:** That's understood.

23 **THE COURT:** Okay.

24 **MR. WEISS:** And one -- just one other point of
25 clarification. There was -- in the coordination frameworks

1 there was kind of a mechanism that written discovery would just
2 be automatically shared and the responses would be
3 automatically shared. I don't know if that -- I heard Your
4 Honor say just now that written discovery will be shared.

5 I guess the coordination framework is kind of
6 triggering discovery in that way as though they are kind of the
7 same action?

8 **THE COURT:** So I don't think you would necessarily do
9 it as if they're the same action. What I would anticipate is
10 that you each do a request for production for the discovery
11 responses in the other case, and then that would be continually
12 supplemented as the case is going on so that it's not shared as
13 part of the same case or as if they are a consolidated case,
14 but it's shared as a discovery response that is supplemented as
15 the case is going on.

16 **MR. WEISS:** Understood, Your Honor. Thank you for
17 that clarification.

18 **THE COURT:** Sure.

19 All right. Yes, sir.

20 **MR. McCLAMMY:** Jim McClammy again for the record.

21 Just one thing I wanted to note. I think with the
22 setting of the mediation deadline --

23 **THE COURT:** Right.

24 **MR. McCLAMMY:** -- we should have also, I believe,
25 probably a deadline for the selection of the mediator.

1 **THE COURT:** Right.

2 **MR. McCLAMMY:** I believe we agreed with the FTC that
3 we do it in that case by January 22nd.

4 **THE COURT:** Okay.

5 **MR. McCLAMMY:** I think with the -- I think that date
6 should also work probably here to have the parties trying to
7 agree to a mediator by January 22nd.

8 **MR. BURKE:** We agree.

9 **THE COURT:** Okay. Very good. All right. So let's
10 include January 22nd as the date to agree to a mediator. If
11 not, then the Court will select a mediator. Again, I think you
12 all probably have a lot better sense as to who might be
13 somebody that would be helpful to you all. And then the
14 deadline for conducting the mediation would be the July 25,
15 2025, date. So that should give you time to get on the
16 mediator's calendar in time.

17 All right. So any other questions or any other
18 pieces that folks want to raise or address or anything I missed
19 that was a subject of dispute that I didn't cover?

20 I'm looking at the proposals to see if there are any
21 other issues, and I'll invite you all to do the same, if there
22 is anything else that you all -- or you can discuss with each
23 other if there is anything else.

24 We did talk about scheduling depositions. Certainly,
25 I would anticipate you all are working together to schedule

1 those. That's primarily going to be between the noticing party
2 and the recipient of the deposition notice. And what I would
3 anticipate in terms of timing is that if the date that's
4 proposed isn't workable, then certainly for parties that,
5 within a week, you provide more than one alternative, and then
6 the parties try to work together, to the extent possible,
7 again, noting that if there are other folks who just need to
8 attend -- I'm hopeful that with the number of attorneys that
9 you all can find an attorney to cover it and so that attorney
10 availability doesn't become an issue with discovery scheduling
11 and that you're just looking at the available dates for the
12 deponent to try and make sure we get all of those scheduled.

13 I think, with regard to confidential information, I
14 had also noted that the Plaintiffs will provide their motion
15 for an interim protective order by May 24th and reserving the
16 question of what information that is designated as attorneys'
17 eyes only should also be provided to the individual Plaintiffs.
18 And I can take that up later or separately to the extent the
19 parties aren't able to address or work that out.

20 It may be that there are particular documents that
21 are all part of the designation of attorneys' eyes only but
22 that you all can agree can still be shown to the individual
23 Plaintiffs, rather than trying to do that as a whole category.
24 And so it may be helpful for you all to look at the documents
25 and then be able to make a decision as to that.

1 But let's at least get the interim protective order
2 in place, but that's without prejudice to further consideration
3 of that issue in terms of who gets to see documents that might
4 be designated attorneys' eyes only, whether as a group or
5 particular documents that are identified.

6 And, Mr. Burke, does that address that issue that you
7 had raised as well?

8 **MR. BURKE:** It does, Your Honor.

9 Just for context --

10 **THE COURT:** Sure.

11 **MR. BURKE:** -- we're not providing our clients, the
12 farmers, access to a relativity database where they are going
13 to be rifling through (indiscernible). This is more in the
14 nature of this is the complaint we're filing with your name on
15 it. We would like to explain it to you.

16 I don't want to be in a position where I have
17 redacted things in that --

18 **THE COURT:** Right.

19 **MR. BURKE:** They have an oversight function towards
20 us, and we have a fiduciary duty to class. They need to see
21 these things. That's all this really is about.

22 **THE COURT:** Well, and I think that's -- as I said,
23 what I would anticipate is that your protective order may
24 include some provision where the parties can meet and confer
25 and agree that particular documents, even if designated as

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1 attorneys' eyes only, can be provided to the individual
2 farmers. It doesn't otherwise change the designation except
3 that they're subject to whatever agreement or whatever proposed
4 order then is included that they've signed and that they're
5 agreeing and subjecting themselves to the contempt authority of
6 the court, and then they agree to keep that confidential.

7 But it does -- I would anticipate that there are
8 going to be some documents, including at least some more
9 narrowly redacted version of the complaint or some other
10 limited group of documents, that there is a particular reason
11 to show to the individual Plaintiffs and that the Defendants
12 can agree to, again, on a more limited basis.

13 And so what I would suggest is, as you're working
14 this out, you can include this in the interim protective order
15 if you're ready to do that, if you all agree to it, but some
16 provision that the parties can agree to share
17 attorneys-eyes-only documents with the individual Plaintiffs,
18 subject to their agreement to the order that they have signed.
19 And then if there's not agreement on that, then you can bring
20 it to the Court.

21 And that may be enough to address the issue. If not,
22 you can still hold the issue, whether you come back with a
23 revised protective order or just a separate motion to challenge
24 the confidentiality designation, and then we can take that up.

25 But I'll let you all try to work that out. I'm

1 hoping that the Defendants can -- even if they still categorize
2 it as attorneys' eyes only, can agree that some particular
3 documents can be shared with the individuals.

4 **MR. BURKE:** Thank you, Your Honor.

5 **THE COURT:** All right. Yes, sir.

6 **MR. McCLAMMY:** Jim McClammy for the record.

7 I think we're happy to do that. I think the best
8 thing would be to get the interim order in so that we make sure
9 we have the investigatory files kind --

10 **THE COURT:** Right.

11 **MR. McCLAMMY:** -- of produced as quick as we can.

12 **THE COURT:** Right.

13 **MR. McCLAMMY:** And the only other thing I would
14 remind the Court of is that it's not simply just the
15 Defendants' documents that will be covered by this highly
16 confidentiality -- highly confidential issue --

17 **THE COURT:** Right.

18 **MR. McCLAMMY:** -- we have to make sure that we're
19 drafting it to protect the interests of the third parties as
20 well who will have a say as to whether they're documents that
21 are --

22 **THE COURT:** Right.

23 **MR. McCLAMMY:** -- attorneys' eyes only should be
24 shown.

25 **THE COURT:** And so in the -- I agree. Give me an

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1 interim protective order tomorrow so that we can get the FTC
2 files turned over. I think that's the most important thing.
3 But if we're looking at a revised protective order or some
4 provision for how you manage it, it may be appropriate that the
5 parties and, in addition, any party claiming confidentiality
6 can agree -- and so that if it's some other party claiming
7 confidentiality, then they actually also have to be part of the
8 agreement -- to provide those to the individual Plaintiffs, and
9 then you can address it on a document-by-document basis that
10 way instead.

11 **MR. McCLAMMY:** Thank you, Your Honor.

12 **THE COURT:** All right. And as I mentioned, I think I
13 have the ESI order, and it didn't look like there were any
14 issues with that.

15 Anything I would need to know before I adopt the ESI
16 order for the Plaintiff?

17 Mr. Burke, anything on that?

18 **MR. BURKE:** No, Your Honor.

19 **THE COURT:** Okay. Anything, Mr. Weiss, for the
20 Defendants?

21 **MR. WEISS:** No, Your Honor.

22 **THE COURT:** Okay. All right. So I think those are
23 the issues, but I'm going to go back around again just to make
24 sure there is not anything else that you all need me to
25 clarify, any other issue I missed, any other dispute that we

1 haven't resolved, or anything else that came up in your
2 discussions that maybe you need me to elaborate further.

3 Mr. Burke, for the MDL Plaintiffs?

4 **MR. BURKE:** No. Plaintiffs thank you for your time
5 and your graciousness.

6 **THE COURT:** Absolutely. I'm glad we could work
7 through all of this.

8 Mr. Weiss, anything for Corteva?

9 **MR. WEISS:** Nothing further, Your Honor. Thank you
10 for spending so much time with us today.

11 **THE COURT:** Absolutely.

12 All right. Mr. McClammy, for Syngenta?

13 **MR. McCLAMMY:** No, also nothing further, Your Honor.
14 Thank you.

15 **THE COURT:** All right. And, Ms. Maltas, for the FTC?

16 **MS. MALTAS:** Nothing further. Thank you, Your Honor.

17 **THE COURT:** Okay. Very good.

18 Well, I am also going to just again recommend/ask
19 that you meet once a month or so on an actual -- not just
20 email. You can choose whether you're doing it by video or by
21 telephone, but that you actually talk to each other and have
22 those kinds of ongoing communications so that if there is an
23 issue that's bubbling up, you can ask to be put on the pretrial
24 conference day for that month so we can go ahead and get you
25 scheduled quickly.

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1 And, usually, what I'll do is if you're asking for
2 that, I will just tell you to file a joint report two or three
3 days ahead of time so you can tell me what the dispute is about
4 so I have some idea of what we're getting into coming into it,
5 and then I'll just add you to the calendar.

6 I may next time put you behind whoever else is here
7 for their initial pretrial conference, but we'll go ahead and
8 set you, if we need to, on whatever that month's pretrial
9 conference day is.

10 And then if there are any other issues that come up,
11 then you're all on for October 24th, and so I will see you back
12 on that pretrial conference day in a few months.

13 So I appreciate everybody's time. I hope you're able
14 to catch your flights this afternoon.

15 And we'll go ahead and adjourn.

16 (END OF PROCEEDINGS.)

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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF TRANSCRIBER
4

5 I, Briana L. Chesnut, Official United States Court
6 Reporter, certify that the foregoing transcript is a true and
7 correct transcript of the proceedings produced solely from an
8 audio recording to the best of my ability in the above-entitled
9 matter.

10 Dated this 29th day of May 2024.
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Briana L. Chesnut, RPR
16 Official United States Court Reporter
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